FOIPA COVER SHEET

FREEDOM OF INFORMATION AND PRIVACY ACTS

SUBJECT: BARKER/KARPIS GANG

BREMER KIDNAPPING

FILE NUMBER: 7-576

SECTION : 274

FEDERAL BUREAU OF INVESTIGATION

SUBJECT Barker/Karpis Gang (Bremer Kidnapping)

FILE NUMBER 7-576

SECTION NUMBER 274

SERIALS 15324 only

TOTAL PAGES 111

PAGES RELEASED 111

PAGES WITHHELD 0

EXEMPTION(S) USED b7c b7d

FEDERAL BUREAU OF INVESTIGATION

Form No. 1
THIS CASE ORIGINATED AT CINCINNATI FILE NO.

REPORT MADE AT	DATE WHEN MADE	PERIOD FOR WHICH MADE	REPORT MADE BY
MINNEAPOLIS	2-12-54	2-1-5,8-10-54	SIGURD FLAATA, SA gam

TITLE	CHARACTER OF CASE
ALVIN KARPIS, was (~~deceased~~); ARTHUR R. BARKER, was (deceased); VOLNEY DAVIS, was; ET AL; EDWARD GEORGE BREMER - VICTIM	KIDNAPING

SYNOPSIS OF FACTS:

VOLNEY DAVIS, who was sentenced in this case on June 7, 1935, to life imprisonment at St. Paul, Minnesota, after entering a plea of guilty on June 3, 1935, to a charge of kidnaping - conspiracy, filed a petition on December 5, 1952, for release on habeas corpus in the district of Minnesota. DAVIS based his petition on the following points: (1) He was not represented by counsel, (2) was never taken before a U. S. commissioner, (3) was never presented with a copy of the indictment prior to his trial, (4) was not thoroughly advised as to his constitutional rights before entering his plea or being sentenced, (5) did not wholly, voluntarily, intelligently, and competently waive the right to counsel, (6) being unlearned in law, did not understand or know his constitutional rights, (7) was held incommunicado in a distant city under questioning in chains and in secrecy, (8) was led to believe by his captors that if he entered a plea of guilty he would be given a term of years. Petition denied by United States District Court Judge MATTHEW M. JOYCE on January 21, 1953. United States Circuit Court of Appeals for Eighth Circuit reversed Judge JOYCE on January 25, 1954, and ordered a hearing to be held on the petition of VOLNEY DAVIS. Assistant United States Attorney ALEX DIM, St. Paul, Minnesota, advised approval received on February 5, 1954, from Department to proceed with hearing and Judge JOYCE to be requested to have VOLNEY DAVIS brought before him during week of February 22, 1954, for purpose of determining whether DAVIS desires the court to appoint an attorney to represent him, and recommendation will be made to Judge JOYCE to set hearing for week of March 10, 1954. AUSA has requested that all persons who have given affidavits refuting charges made in petition filed by DAVIS in 1940 while incarcerated at Alcatraz be located and reinterviewed and signed statements obtained reaffirming affidavits, which are set forth.

APPROVED AND FORWARDED:	SPECIAL AGENT IN CHARGE	DO NOT WRITE IN THESE SPACES
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Mr. DIM has also requested that all agents who participated in apprehension, questioning, search, and transportation of VOLNEY DAVIS be located and interviewed and signed statements obtained. Facts surrounding apprehension of DAVIS on June 1, 1935, at Chicago set forth with signed statement and waiver of removal, which DAVIS signed. Petition of VOLNEY DAVIS set forth. Copy of brief of United States attorney dated July, 1953, opposing VOLNEY DAVIS' petition furnished the Bureau as enclosure. Sheriff THOMAS GIBBONS, St. Paul, Minnesota, advised copy made of letter written by VOLNEY DAVIS to his mother, father, and sister dated June 3, 1935, from Ramsey County Jail, St. Paul, Minnesota, in which DAVIS stated he has entered a plea of guilty to conspiracy and that he expected to be sentenced to life imprisonment when he comes up for sentencing and that he had been treated well and was in good health. Data re local newspaper publicity set out.

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DETAILS:

AT MINNEAPOLIS, MINNESOTA, AND ST. PAUL, MINNESOTA

By air tel dated January 27, 1954, the St. Louis office advised that on January 25, 1954, the U. S. Circuit Court of Appeals for the Eighth Circuit had reversed the decision of the U. S. District Court for the district of Minnesota in the case entitled "VOLNEY DAVIS, appellant, versus The United States of America, appellee."

Referenced air tel also advised that copies of the opinion were furnished to the Bureau and that in accordance with the conversation of SAC MILNES with Supervisor FRANK PRICE at the Bureau on January 26, 1954, the Minneapolis office was requested to contact the United States attorney at St. Paul, Minnesota, and review the files of that office to determine whether there was any basis for the subject's claim that he had pleaded guilty in this case without knowledge that he was entitled to counsel.

Minneapolis air tel to the Bureau dated February 5, 1954, advised that the files of the United States attorney at St. Paul reflect, with reference to the basis for VOLNEY DAVIS' claim that he had entered a plea of guilty in this matter without knowledge that he was entitled to counsel, that there was no court reporter present in court on June 3, 1935, when DAVIS was arraigned in St. Paul and that term minutes of the court reflect that upon being questioned by the court (Judge MATTHEW M. JOYCE) the defendant stated he did not desire the advice of counsel and entered a plea of guilty to the charge in the indictment, and the court deferred sentencing until June 7, 1935.

The files of the United States attorney in St. Paul contain copies of the affidavits given in 1940 to oppose a petition for a writ of habeas corpus of VOLNEY DAVIS, which affidavit reflects that VOLNEY DAVIS was questioned prior to arraignment as to his desires for an attorney, and he did not want an attorney.

By letter dated January 28, 1954, the Honorable GEORGE E. MacKINNON, United States attorney at St. Paul, Minnesota, advised the Minneapolis office that the U. S. Court of Appeals for the Eighth Circuit on January 25, 1954, ordered that a hearing be held on the petition of VOLNEY DAVIS under the provisions of Title 28, U. S. Code, Section 2255.

Mr. MacKINNON advised further as follows:

"Briefly, Mr. Davis contends that his plea of guilty on June 2, 1935, to the charge of conspiracy to kidnap

"Edward George Bremer in St. Paul, Minnesota, and transporting him into the State of Illinois in violation of 18 U.S.C. 408A, the Lindbergh Law, and subsequent sentence on June 7, 1935. to life imprisonment by Judge Joyce, was without the advice of counsel, without his knowing of his right to counsel, and without his waiver of counsel. In addition, Volney Davis sets up in his motion that he was held in communicado, in chains, and in secrecy by federal officers between the time of his arrest and the time of his plea of guilty. He further alleges that he was promised a term of years sentence, apparently meaning a sentence of less than life imprisonment.

"It is the intention of this office to proceed as quickly as possible with the hearing before Judge Joyce in St. Paul, Minnesota.

"This office would sincerely appreciate it if you would institute an investigation regarding this matter. Among the things that we think should be checked are the following:

(1) All persons who are available and who were in the court room on June 3, 1935, at the time of Volney Davis' guilty plea, and on June 7, 1935, at the time of his sentence, should be interviewed and statements taken from them concerning their recollection as to whether or not he was advised of his right to counsel by Judge Joyce and what Volney Davis said concerning his desire to be assisted by counsel.

(2) The arresting officers who arrested Volney Davis on or about June 1, 1935, in Chicago, Illinois, should be interviewed concerning his claim that he was there held in chains, and not allowed to see anyone.

(3) Persons should be interviewed concerning the time that Volney Davis was arrested, whether or not he made any request to make a telephone call or to see a lawyer, and the facts surrounding any such circumstances.

"(4) Persons such as FBI agents, United States Attorneys, or Assistant United States Attorneys at that time, such as Mr. George A. Heisey, now Referee in Bankruptcy, Minneapolis, Minnesota, should be interviewed concerning any promises that Volney Davis alleges were made if he would plead guilty to conspiracy, that would result in his being sentenced to less than life imprisonment and for a term of years.

(5) FBI Agents should be interviewed concerning whether or not Volney Davis asked them for permission to talk to a lawyer and they in turn told him 'We are all lawyers, and we will take care of you.'"

The following is a copy of the petition filed by VOLNEY DAVIS on September 5, 1952, with the clerk of court for the District of Minnesota, Third Division:

UNITED STATES OF AMERICA

DISTRICT OF MINNESOTA
THIRD DIVISION

VOLNEY DAVIS Petitioner	)	
VS	)	No. 6096 Criminal
UNITED STATES OF AMERICA Respondent	)	

NOTICE TO CLERK OF COURT

The petitioner and defendant is hereby, within, mailing the original and four (4) copies thereof to you, and requesting that you make proper service of this cause of action on the opposing side, and enter said service upon the record in this cause.

Respectfully submitted

S/ Volney Davis

Filed December 9, 1952
Chell M. Smith, Clerk
By William H. Eckley, Deputy

UNITED STATES CASES AND RULES OF CRIMINAL LAW AND PROCEDURE SUPPORTING CONTENTIONS IN THIS MOTION

Title 28, Section 2255
Title 28, Section 1654 U.S.C.A.
Johnson v. Zerbst, 1938, 304 U.S. 458
Walker v. Johnston, 312 U.S. 275
18 U.S.C.A. (Supp) following - 687
Evans v. Rice, 126 F (2d) 633, 637 (app. D.C. 1942)
Von Moltke v. Giles, 332 U.S. 708 (1948)
Curtis v. Hiatt 169 F. (2d) 1019
Frank v. Mungum, 237 U.S. 309
Johnson v. Zerbst Super, 304, U.S. 458, 462
82 L. ed. 1461, 1465
Waley v. Johnston, 316, U.S. 101, 86 L (Ed.) 1302
Screws v. United States 325, U.S. 91, 120, 89, L, (Ed.) 1945
Walker v. Johnston U.S.C.A. 6 Amend.;
61 S. Ct. 574 reversing 109 Fed. 2d. 436
McNabb v. U.S. 318 U.S. 332 (1943)
Upshaw v. U.S., 335 U.S. 410 (1949)
McNabb - Upshaw doctrine, see 43 Ill. L. Rev. 442
Glasser v. U.S. 60, 62, S. ct. 457, 465, 86 L. (Ed.) 680
Brauer v. U.S. 299, F 10;
King v. Solomons, 4, 1, T.R. 251
Hayman v. U.S. 187, F. (2d) 453
U.S. v. Hayman 342, U.S. 205, 72. S. Ct. 263
Brown v. Rines, C.C.A. 104, F (2) 240
Mooney v. Hollohon, N.C. 294
Kercheval v. U.S. 274 U.S. 220
U. S. Law Title 28, Sec. 2255
Rules of Criminal Procedure
Rules 5, 10, 35, 44
Constitutional Amendments
5th Amend., 6th Amend., 8th Amend.

STATE OF KANSAS)
) SS:
LEAVENWORTH COUNTY)

AFFIDAVIT OF POVERTY

MP 7-30 SF:GAM

1. I am a citizen of the United States by virtue of birth.

2. I am the defendant and petitioner in the above entitled actions and entitled to defend the same.

3. Because of my poverty, I am unable to pay the costs of said filing or to give security for the same.

4. This affidavit is made for the purpose of availing myself of the rights and priviledges in such cause provided by Section 1915, Title 28, of the United States Code.

5. Unless I am permitted to proceed in forma pauperis and be the recipient of an order directing the Court Clerk to place on the docket the above stated actions, I will be utterly unable to rectify the errors complained of. Wherefore, petitioner prays that he may have leave to file and prosecute aforesaid actions in forma pauperis, pursuant to above said statute.

S/ Volney Davis

Sbuscribed and sworn to before me this Dec 5, 1952.

_____
Notary Public

My commission expires July 23, 1956

IN THE PETITION OF

VOLNEY DAVIS)
Petitioner)
)
VS)
)
UNITED STATES OF AMERICA)
Respondent)

No. 6096 Criminal

CERTIFICATE OF PETITIONER PROCEEDING
PRO SE IN FORMA PAUPERIS

I hereby certify that I am without counsel and am proceeding in the above entitled cause and that, in my judgment, the foregoing petition

is well founded in law and in fact, and that said petition is not interposed for harassment.

Dated: 12-5 1952, at Leavenworth, Kansas.

S/ Volney Davis

P.O. Box 1200
Leavenworth, Kansas

UNITED STATES OF AMERICA
DISTRICT COURT
ST. PAUL, MINNESOTA
THIRD DIVISION

VOLNEY DAVIS)
Petitioner)
)
VS)
)
UNITED STATES OF AMERICA)
Respondent)

No. 6096 Criminal

PETITION FOR WRIT OF HABEAS CORPUS ADTESTIFICANDUM

Comes now Volney Davis, petitioner, and moves the Court to direct a Writ of Habeas Corpus Adtestificandum be issued directing the United States Marshall for the Court to obtain the body of Petitioner from custody of the Warden of the United States Penitentiary at Leavenworth, Kansas, to produce him before this Court for the purpose of giving testimony in support of his motion to vacate. Court's attention is directed to the fact your Petitioner is proceeding pro se in accordance with provision of Title 28, Section 1654 U.S.C.A.

S/ Volney Davis

Subscribed and sworn to before me this day Dec 5, 1952.

_____
Notary Public
My commission expires July 23, 1956

MP 7-30 SF:GAM

UNITED STATES DISTRICT COURT
ST. PAUL, MINNESOTA
THIRD DIVISION

VOLNEY DAVIS)
Petitioner) No. 6096 Criminal
)
VS)
)
UNITED STATES OF AMERICA)
Respondent)

MOTION TO VACATE OR NULLIFY AND/OR REDUCE JUDGMENT

The Honorable and Learned Judge Mathew M. Joyce:

May it please the Court.

Comes now your Petitioner, Volney Davis, pro se, and enters his name as attorney of record in the above captioned proceedings pursuant to the provisions of Title 28, Section 1654 U.S.C.A. and gives notice to the Court that he is going to keep control and management of his case throughout the life of same in this proceeding.

JURISDICTIONAL STATEMENT

The jurisdiction of the Court is hereby invoked in accordance with the provision of Title 28, Section 2255, U.S.C.

Petitioner was arraigned June 3, 1935, and was sentenced June 7, 1935. Petitioner herein moves the Court to vacate or nullify, or set aside, and/or reduce the judgment imposed by an incomplete Court for the following reasons, to-wit:

1. Petitioner was sentenced to a life sentence without the advice of counsel on June 7, 1935, and at the same time four other co-defendants charged on the same indictment for the same offence were sentenced to terms of years as follows: Elmer Farmer, 20 years; Harold Alderson, 20 years; James Wilson, 10 years, and John Joseph McLaughlin, 5 years.

2. When Petitioner was sentenced he did not know that the Constitution of the United States had anything to do with him

as to his rights, or that the Judge was to protect his rights by them. In fact, Petitioner had never read the Bill of Rights.

3. Petitioner was led to believe, by his questioners, that if he entered a plea to conspiracy he would be given a term of years.

UNITED STATES DISTRICT COURT
ST. PAUL, MINNESOTA
THIRD DIVISION

VOLNEY DAVIS)
Petitioner)
)
VS)
)
UNITED STATES OF AMERICA)
Respondent)

No. 6096 Criminal

MOTION TO SET ASIDE AND VACATE
AND NULLIFY AND/OR REDUCE JUDGMENT

TO HONORABLE MATHEW M. JOYCE, JUDGE OF SAID COURT:

Comes now the Petitioner and Defendant, Volney Davis, in the above entitled and numbered cause and moves the Honorable and learned Court that an order be made and entered and directed to the Attorney General of the United States of America directing that judgment and sentence be set aside, and vacated, and/or reduced in the above styled cause of action for facts that follow, to-wit:

1. Petitioner was not represented by Counsel.

2. Petitioner was never taken before a United States Commissioner, which violates Rule 5 of United States Criminal Procedure.

3. Petitioner was never presented with a copy of the Indictment prior to his trial, which is in violation of Rule 10 of Criminal Procedure.

4. Petitioner was not thoroughly advised as to his constitutional rights before entering plea, or before being sentenced.

5. Petitioner did not wholly voluntarily, intelligently, and competently waive the right to counsel.

6. Petitioner, being unlearned in law, did not understand or know his constitutional rights.

7. Petitioner was held incommunicado in a distant city under questioning, in chains and in secrecy.

8. Petitioner was led to believe, by his captors, that if he entered a guilty plea he would be given a term of years.

ARGUMENTS FOR REASON NO. 1

1. Petitioner was brought into court direct from forty hours without sleep and continuous questioning, and was in no mental condition to make any decisions of importance. He had been told by the F.B.I. Agents that he could not have a lawyer and that he could not use a telephone or see anyone until he made a statement. He was handcuffed and shackled all this time. Any thing he might have said was influenced by this condition.

He agreed to enter a plea after he was told there were two counts against him. They said one was kidnapping, of which he knew he was not guilty. The other was conspiracy. They told him if he knew any of the people charged with the kidnapping or had ever associated with them during the crime he would be guilty of conspiracy. They also said conspiracy carried a less penalty than kidnapping. The assistant prosecutor, Mr. Hiesey led him to believe this. It was under such conditions he agreed to plead guilty to conspiracy.

He was brought into court on the 7th day of June, 1935, with the above mentioned co-defendants, and if his memory serves him right, he was sentenced first. To the best of his knowledge, this is what was said to him by the Honorable Mathew M. Joyce as he stood there before a crowded court room without a friend of any kind to speak for him or advise him in any way. "Your name is Volney Davis?", he said. "Yes." "Do you have a lawyer?" he said. "No, I don't - I don't need one, do I?" "No you don't. You have entered a plea to conspiracy, but I am not sentencing you as a conspirator - I am sentencing you as an actual kidnapper; as being on the scene of the crime; having a gun in your hand, ready and willing to aid in any way you could to see that the

crime was carried through. I am sentencing you to the Leavenworth Penitentiary to serve your natural life at hard labor."

The four above named co-defendants were sentenced to terms of years after each and every one had a lawyer to go before the court and make a plea for him in his behalf.

ARGUMENTS FOR REASON NO. 2

2. Petitioner had only a sixth grade education in June, 1935, and to his knowledge, had never read the Bill of Rights, nor the United States Constitution. How could a layman waive such an essential right intelligently and competently when he did not know of his rights, nor even of the judge's duty to grant him his rights? Petitioner was never counseled nor told that he should have a counsel to defend his rights and to have one in opposition to the United States Prosecutor would make a complete court. A judgment handed down against a defendant by an incomplete court is void. A complete court consists of a Judge, the Attorney representing the government, and the attorney representing the defence. The absence of one of the above named officials constitutes an incomplete court and thereby makes the proceedings illegal and a denial of due process of law, which is in direct violation of the Fifth and Sixth Amendments to the United States Constitution. (The Fifth Amendment states: ". . . nor a person be deprived of his life, liberty or property, without due process of law." The Sixth Amendment states: ". . . Defendant shall enjoy the assistance of counsel at every step in his proceeding, including time to confer with counsel."

When it is apparent that the defendant in a criminal proceeding is about to lose the most valuable asset he could possibly own on the face of this earth and it is in jeopardy, and he is ignorant of his Constitutional Rights, how could a defendant competently and intelligently waive so valuable a right? This right of counsel is considered indispensable by the higher courts.

(Citing)

Johnson vs. Zerbst, 1938, 304 U.S. 458. Codified in the Federal Rules of Criminal Procedure. Rule 44, Assignment of Counsel. "If the defendant appears in court without a counsel, the court shall advise him of his right to counsel and assign counsel to represent him at every stage of the proceeding, unless he elects to proceed without counsel, or is able to obtain counsel." 18 U.S.C.A. (Supp) following - 687.

Walker vs. Johnston, 312 U.S. 275 implicitly held that a plea of guilty should not be deemed a waiver of counsel. And, Evans vs. Rice, 126 F (2d) 633. 637 (App. D.C. 1942) held that Johnson vs. Zerbst applied to conviction upon a plea of guilty. Von Moltke vs. Giles, 332 U.S. 708 (1948) (German spy acting without the advise or knowing waiver of counsel, pleaded guilty in s prosecution under the espionage act at the suggestion of an agent of the F.B.I.) applies this rule to an intelligent defendant, financially capable of providing counsel, but merely ignorant of her rights.

In Curtis vs. Hiatt, 169 F (2d) 1019 involving a bank robbery case, the court held that the mere fact that the court offered to appoint an attorney (to which the reply was "no" "I'm guilty") was not enough to constitute waiver. The court must establish a factual foundation before it can determine whether or not there has been an intelligent waiver of his rights.

"In determining whether one convicted of crime has been denied due process, the entire course of proceedings, and not merely a single step, should be considered." (Frank vs. Mangum, 237 U.S. 309) When the substantial rights guaranteed by the Constitution becomes the subject of hollow formality in the lower courts, it is only necessary and reasonable that protective substance be restored to those rights. This procedure is Necessary to insure that prisoners realize the exact charges brought against them and the extreme penalties provided by law, before a plea of guilty is accepted and they are committed to prison.

ARGUMENT FOR REASON NO. 3

3. Petitioner was led to believe he would be given a term of years by the F.B.I. Agents if he entered a plea of guilty to conspiracy. Also, a Mr. Hissiey (not sure of spelling of name) who was an Assistant Prosecutor, and talked to petitioner while he was handcuffed in the Federal Building in St. Paul and while petitioner was in the custody of the F.B.I. Agents, told petitioner there were two counts on the Indictment and one carried a lesser penalty - Conspiracy was the one that carried the lesser penalty, and Petitioner agreed to enter a plea to that part of the Indictment, not knowing what the Indictment said, nor that if he entered a plea to conspiracy that he was also entering a plea to the full Indictment.

ARGUMENTS ON FACTS NO. 1

1. Petitioner was not represented by counsel. Although Petitioner sent for the minutes of the Court in 1939, they stated petitioner had counsel. Petitioner filed a Writ at that time, knowing he had no counsel. The Writ was held up until the Court could enter a motion to correct the Court minutes to make them read petitioner did not have counsel. The minutes were also changed to make them read: "On the 7th day of June, 1935, came the United States Attorney, George F. Sullivan, and the defendant, Volney Davis, appearing in proper person, and having been asked on June 3, 1935, whether he was willing to plead without the assistance of counsel, replied that he was, and by reason of the plea of guilty entered herein on the 3rd day of June, 1935, it is by the Court."

   Petitioner contends that if his case had no more importance to the Court as to his rights by the United States Constitution than for the Court Clerk to keep the records straight during his hearing, that there is cause to show petitioner did not receive due consideration as guaranteed by the Fifth and Sixth Amendments of the Bill of Rights to the United States Constitution. These records were changed without the knowledge of Petitioner, and without him being in Court.

ARGUMENT ON FACT NO. 2

2. Petitioner was arrested in Chicago, Ill. June 1, 1935, at 12 o'clock - was then taken to the office of the F.B.I. on the 19th floor of the Federal Building by freight elevator - was held there in chains and not allowed to see anyone - was never taken before a United States Commissioner as Rule 5 of the United States Criminal Procedure requires he shall.

ARGUMENT ON FACT NO. 3

3. Petitioner was never given a copy of the Indictment prior to his arraignment, nor after his arraignment before sentence, which is in violation of Rule 10 of Criminal Procedure. How could one not versed in law understand an eight-page indictment with twenty-six people named in it, some of which Petitioner had never heard of much less knew, make an intelligent waiver of his Constitutional Rights by just hearing it read, after Petitioner had been without sleep for two days and two nights?

ARGUMENT ON FACT NO. 4

4. Petitioner, to his knowledge, was not advised thoroughly as to his Constitutional Rights before entering plea, as no one told him why he should have a counsel to make the court complete, nor that it was the duty of the Court to see that if counsel was waived that Petitioner should be interviewed as to his knowledge of his Constitutional Rights and the reason he should have counsel to protect him in every stage of the procedure to the cause at hand. Citing this decision in support of fact No. 4:

In Curtis vs. Hiatt, 169 F (2d) 1019 involving a bank robbery case, the court held that the mere fact that the court offered to appoint an attorney (to which the reply was "No, I'm guilty.") was not enough to constitute waiver. The court must establish a factual foundation before it can determine whether or not there has been an intelligent waiver of his rights. Petitioner thus contends that the facts which will be brought out on a full hearing will show that the case was disposed of with all possible dispatch, to such an extent that the procedure violated the requirements of the Fifth and Sixth Amendments. In determining whether one convicted of crime has been denied due process, the entire course of proceedings, and not merely a single step, should be considered,

ARGUMENT ON FACT NO. 5

5. Petitioner, having only a Sixth grade education at time of his trial knew nothing of the workings of a Federal Court, nor did he knowingly waive any of his constitutional rights. He only did what he was told by the prosecution and the F.B.I. Agents. Thinking they, being the Government officials, had all power and could do as they wanted. Petitioner knew nothing of due process nor Constitutional Rights.

Johnson vs. Zerbst, super, 304, U.S. 458, 462; 82 L. Ed. 1461, 1465. The right of the accused to be informed of his right to counsel for his defence is an affirmative duty which the Sixth Amendment places on the Government. It is a condition precedent to the jurisdiction of the Court, and non compliance with this condition deprives the Court of jurisdiction to proceed. In Johnson v. Zerbst, 304 U.S. 458, 462, 82 L. Ed 1461, 1465, the court said "If this requirement (the right to counsel) of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed." 304 U.S. at 468; C.F. Waley v.

Johnston, 316 U.S. 101, 86 L. Ed. 1302, where it was held that a coerced plea of guilty deprived the trial court of jurisdiction even though the defendant was represented by counsel.

The rights guaranteed by the Sixth Amendment can be waived, but only by an intelligent and understanding waiver, and "courts indulge every reasonable presumption against waiver of fundamental constitutional rights." Johnson v. Zerbst, super.

ARGUMENTS ON FACTS NO. 6

6. Petitioner, being limited in understanding of Federal Court procedure and with only a Sixth grade education, could not have understood nor known his Constitutional Rights.

The government is under an obligation to deal fairly with persons accused of criminal offences. The minimum of its obligation is to inform the accused of the elements of the offence charged and of his right to counsel. This is a historic right of the accused, a Constitutional safeguard established to insure justice. Courts should be reluctant to encrouch on such historic rights . . . for the "old and established freedoms vanish when history is forgotten." Mr. Justice Rutledge, concurring in Screws v. United States, 325 U.S. 91, 120, 89 L. Ed., 1495.

"If accused did not voluntarily waive his right to counsel or if he was deceived or coerced by prosecutor into entering a guilty plea, accused was deprived of the Constitutional Right to assistance of counsel for his defense." U.S.C.A. 6 Amend.; Walker v. Johnston 61 S. Ct. 574, reversing 109 Fed. 2d. 436.

ARGUMENTS ON FACT NO. 7

7. Petitioner was not allowed to make a phone call; nor see a lawyer; nor was he taken before a Commissioner to be told of his charge; nor was he given a copy of the Indictment; nor advised as to bail. Petitioner was held in an office building under constant questioning. The following cases uphold this Argument. McNabb v. U.S. 318 U.S. 332 (1943); Upshaw v. U.S., 335 U.S. 410 (1949).

For a discussion of the McNabb-Upshaw doctrine, see 43 Ill. L. Rev. 442.

GROUNDS FOR FACT NO. 8

8. Petitioner was led to believe that if he entered a plea to conspiracy he would be given a term of years. Petitioner never talked to anyone except F.B.I. Agents and the Assistant United States Attorney, Mr. Hiesey (not sure of spelling) [illegible] F.B.I. Agents if he could talk to a lawyer they said "We own all lawyers, we will take care of you." Mr. Hiesey told Petitioner that there were two counts on the Indictment and that conspiracy was the lesser charge, and one could get a term of years for that count.

The following are laws and cases cited to uphold Petitioner's contentions in this Motion.

Glasser vs. U.S. 60, 62. S. Ct. 457, 465, 86 L. Ed. 680:

The court said through Mr. Justice Murphy: "To preserve the protection of the Bill of Rights for hard pressed defendants, we indulge every reasonable presumption against the waiver of fundamental rights.

"The fact that Glasser is an attorney is, of course, immaterial to a consideration of his right to the protection of the Fifth Amendment; his professional experience may be a factor in determining whether he actually waived his rights to the assistance of counsel, But is by no means conclusive." The accused and record facts that show such denial will warrant his discharge from confinement and setting aside of the sentence secured by such means. Johnson vs. Zerbst, supra.

A conviction must be good in all its parts - the Indictment must be supported by both - lacking these qualities fundamental in the administration of justice, the entire procedure is void. Brauer vs. United States 299, F 10; King vs. Solomons, 4, 1, T.R. 251.

A conviction received in violation of a defendant's Constitutional Rights is void for want of the elements of due process and the proceedings thereby violated may be challenged in any appropriate manner re: Brown vs. Rines, C.C.A. 104 F (2) 240; Mooney vs. Hollohan, N.C. 294.

In the case of Walker vs. Johnston 312 U.S. 275, the Court said: "A petitioner cannot be denied the opportunity to prove the truth of the allegations he makes."

The Sixth Amendment to the United States Constitution says "and to have the assistance of counsel for his defense."

Von Moltke v. Gilles, supra., The court citing Kerchival v. U.S. 274 U.S. 200 said:

"A plea of guilty differs in purpose and effect from a mere admission or extra-judicial confession; it is itself a conviction. Out of just consideration for persons accused of crime, courts are careful that a plea of guilty shall not be accepted unless made voluntarily and with full understanding of the consequences." (underlined, writer's italics)

A waiver of the Constitutional Right to the assistance of counsel is of no less moment to an accused who must decide whether to plead guilty than to an accused who stands trial . . . . . (id)

"The right to have the assistance of counsel is too fundamental and absolute to require Courts to indulge in nice calculations as to the amount of prejudice arising from its denial."

In the case of the eleven communists convicted for conspiracy to overthrow the United States Government, Supreme Court Justice Jackson ruled: "The right of every American to equal treatment before the law is wrapped up in the same constitution bundle with those of the communists."

The Court ruled in the communist defendants' favor, and made certain that the Constitution was adhered to in every respect.

IN CONCLUSION

Petitioner has written this motion in the best manner at his command. Petitioner prays the Honorable Judge Mathew M. Joyce will excuse mistakes in grammer, phraseology, construction, and repetitious statements. Petitioner has made this motion in good faith. Petitioner's name is not used in any overt act in the Indictment as are the names of two of the co-defendants who were sentenced to twenty years each at same time petitioner received a life sentence. Petitioner prays to the Lord and to

the Honorable Court that this motion will receive favorable action.

Respectfully submitted.

S/ Volney Davis
47101

STATE OF KANSAS)
) S.S. OATH OF VERIFICATION
COUNTY OF LEAVENWORTH)

Volney Davis being first duly sworn upon his oath deposes and says he is the defendant named in the foregoing and that statements made therein are true according to his best knowledge and belief.

Subscribed and sworn to before me this 5th day of Dec., 1952.

_____
Notary Public

My commission expires July 23, 1956

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The files of the United States Attorney, St. Paul, Minnesota, reflect that VOLNEY DAVIS filed a petition for a writ of habeas corpus in 1940 with the United States DistrictCourt for the Northern District of California, Southern Division, which was denied. Inasmuch as this petition by VOLNEY DAVIS related a "Summary of Procedure before Entering Plea" and allegations are made by DAVIS relative to his treatment after his arrest, this petition is also being set forth in order that allegations may be properly refuted in the event reference is made to them in a hearing:

"VOLNEY DAVIS,
PETITIONER,

VS.

"JAMES A. JOHNSTON, WARDEN,
UNITED STATES PENITENTIARY,
ALCATRAZ, CALIFORNIA.
RESPONDENT.

PETITION FOR WRIT OF HABEAS CORPUS

"Comes now your petitioner Volney Davis, and presentsthis, his petition for writ of habeas corpus, and shows to this Honorable Court the following facts:

-1-

"That your petitioner is a citizen of the United States of America.

-2-

"That your petitioner is actually imprisoned and restrained of his liberty, and detained in the United States Penitentiary at Alcatraz Island, California, by color of authority of the United States, and is in the custody of James A. Johnston, Warden of said Penitentiary, which is located within the jurisdiction of this Honorable Court.

"The petitioner further represents that he was indicted for violation of, The Act of June 22, 1932, C. 271, 1, 47 Stat. 326 Title 18 U.S.C.C. 408A. To-wit:

"'That whoever shall knowingly transport or cause to be transported or aid or abet in transporting, in interstate or foreign

"commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward shall, upon conviction, be punished by imprisonment in the penitentiary for such term of years as the court in its discretion, shall determine.'

"In the United States District Court for the Third Division District of St. Paul, Minnesota, upon his plea of guilty he was sentenced to life in prison.

"Certified copies of these indictments and proceedings are hereto attached and made a part of this petition.

"Exhibit "A" is the judgment and sentence of the U. S. District Court of St. Paul, Minnesota that he requested and received in October 1937. And upon reading shows he entered court with an attorney but of whom he knew nothing about. And after reading in the Johnson vs. Zerbst case that, 'when collaterally attacted, a judgment of a court carried with it a presumption of regularity' U. S. 58 S. Ct. 1019 to 1025.

"So in October 1939, he petitioned the court to remove that part from his judgment, To-wit, 'With his Attorney'.

"Then without notifying him that his petition was to be heard or appointing him counsel to defend his petition, or notifying him that his judgment had been changed, they proceeded to change it to this, his Exhibit "B". The order amending judgment, which is dated October 10, 1939, was sent to him upon request Jan. 8, 1940. Returned for Certification Jan. 10, 1940. Returned to him after certification Jan. 27, 1940. He notified the U. S. District Court of Minnesota, 3rd Division of St. Paul, his intentions of filing this writ of habeas corpus and told them on what grounds, when he filed his petition and motion for correcting his judgment. This phrase has been added in Exhibit "B". Order Amending Judgment. To-wit: "Volney Davis, appearing in proper person, and having been asked on June 3, 1935 whether he was willing to plead without the assistance of counsel, replied that he was." This was not in the original records of the Court which Exhibit "A", term minutes of petitioners original judgment and sentence clearly show. This statement was added to the judgment to forestall and thwart this Honorable Court in issuing this writ of habeas corpus in defendants behalf.

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"Exhibit "C" are the letters received by petitioner's Sister Mrs. L. B. Hoffman and himself from Victor E. Anderson, United States Attorney and Thomas Howard United States Court Clerk, St. Paul, Minn.

"These letters show clearly the form of procedure they advised petitioner to take in order to have that part of Exhibit "A" to-wit: 'With his Attorney' removed from petitioner's judgment. Letter No. I.C. dated May 12, 1939, tells petitioner to petition the court to correct the Judgment if it is not correct. On May 16, 1939 petitioner sent an affidavit of poverty and affidavit to the fact that he did not employ counsel and that he was not informed by the Court of his Constitutional right to the assistance of counsel and a motion to correct the judgment, to that effect and make it speak the truth. Then on December 23, 1939, petitioner received from his Sister letter No. 5.C. and 6.C. dated November 16, 1939 and Sept. 6, 1939, which told him his judgment had been changed. In Dec., 1939, petitioner wrote the United States Court Clerk, Thomas H. Howard, to send him a copy of the changed judgment, which is Exhibit "B" in this petition. He, the petitioner, received the changed judgment or Exhibit "B" January 8, 1940, and letter No. 3 C. of Exhibit "C". Returned the changed judgment or Exhibit "B" to the United States Court Clerk, Thomas H. Howard for certification on January 10, 1940. The certified copy or Exhibit "B" was returned to petitioner January 27, 1940.

"After petitioner received the certified copy of the order amending judgment or Exhibit "B" he wrote the following letter to Thomas H. Howard, United States Court Clerk, St. Paul, Minnesota:

"Mr. Thomas H. Howard, 1-28-1940
United States Court Clerk,
St. Paul, Minnesota.

"Dear Sir:-

"I am in receipt of your order amending judgment in my case 6096 criminal. I sent you a motion to proceed in forma pauperis. I sent you an affidavit in evidence and a motion to correct my judgment. I now have two certified copies of a true and full copy of the original judgment in my case, and they are conflicting. I would

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"like to know who was appointed to defend my affidavit in evidence at the motion to correct my judgment? If it was impossible to have a lawyer appointed, why wasn't I notified? Shouldn't I have had the same rights in forma pauperis as I would have had if I were able to defray the expenses to file a motion? I was not ask on June 3, 1935 or any other time by the court if I would plead guilty without the assistance of counsel. I would like very much for you to answer these questions for me by return mail. I would like to know why I was not notified of the date that my motion was to be heard.

"Thanking you in advance and expecting an early reply, I remain

"Yours respectfully,

(SGD.) VOLNEY DAVIS #271

"The answer to this letter is No. 4.C. of Exhibit "C" which explains what was done to change the judgment. But in letter No. 2.C. of Exhibit "C" received by petitioner from the United States Attorney Thomas H. Howard, he returns petitioner's affidavits and motion to correct the judgment and tells petitioner he cannot proceed as a poor person, but must retain his own counsel in the matter. Petitioner then sent another affidavit in forma pauperis an affidavit in evidence and a motion to correct judgment which was not returned to him and judging from these letters Exhibit "C" in this petition was not used.

"Over four years have elapsed since petitioner plead guilty, June 3, 1935, and October 10, 1939, when the Honorable Judge M. M. Joyce changed this original judgment Exhibit "A" in this petition from memory. Which petitioner sent for in good faith and received in October, 1937.

"The petitioner further shows that his detention and imprisonment areillegal and unlawful for the following reasons:

"1. Because he was deprived of his liberty without having the assistance of counsel in his behalf. And on May 23, 1938 the United States Supreme Court ruled in the case of Johnson vs. Zerbst, U. S. 58 S. Ct. 1019 to 1025, that under the Sixth Amendment to the United States Constitution, a federal court has no power or authority to

"deprive an accused of his life or liberty unless he has or waives the assistance of counsel. See also Brest vs. Johnston No. 22862-L. See also Powell vs. State of Alabama, 53 Supreme Court Reporter 55, Nov. 7, 1932. 287 U.S. 45. Powell et al vs State of Alabama.

"2. Because the trial court did not ask petitioner if he wanted Counsel, or instruct petitioner that he was entitled to counsel, or that it was his constitutional right to have the assistance of counsel in his behalf, and he did not know that unless he had the money to pay for counsel, to that effect, and, therefore he could not have made an intelligent and competent waiver of his constitutional rights. In the Johnson vs. Zerbst case, The Supreme Court held that:

"'If the accused is not represented by counsel and has not competently and intelligently waived his constitutional right, the jurisdiction of the court is lost, the judgment of conviction pronounced by the court is void, and release from imprisonment may be obtained by habeas corpus.' U.S.C.A. Const. Amend. 6.

"Johnson vs. Zerbst, U. S. 58 S. Ct. 1019 to 1025. 'While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear on the record'.

"Exhibit "A" Term minutes of the original judgment and sentence in my case do not show any waiver of constitutional rights. Your petitioner did not waive any rights that he knew anything about. The only questions the Honorable Judge M. M. Joyce asked him on June 3, 1935, was his name Volney Davis? He replied that it was. He asked him, have you agreed to plead guilty? He replied, Yes, to the minor charge of conspiracy. He asked him if he wanted to hear the indictment read? He replied, Yes. Exhibit "D" is the indictment that was read. He was taken to the Ramsey County jail and put in a solitary cell and held incommunicado until June 7, 1935. He did not know that he could have withdrawn his plea within a certain length of time after entering it.

"Johnson vs. Zerbst U. S. 58 S. Ct. 1019 to 1025: 'One convicted and sentenced without assistance of counsel and who was ignorant of his right to counsel and ignorant of the proceedings to obtain a new trial or appeal and the time limits governing both, and who did not possess

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"the requisite skill or knowledge properly to conduct an appeal, is entitled to relief by habeas corpus.

"Affidavit or Statement by Petitioner, Volney Davis.

"Summary of procedure before entering plea.

"I was arrested in Chicago, Ill., at 12 o'clock noon, June the first 1935, at 1049 North Waller Ave., by Melvin Purvis and his men. I was handcuffed and taken to the Federal Building in the Loop in down town Chicago. I was stripped of my clothes and given a blood incrusted pair of pants and shirt to put on. I wastold these were the clothes Robert (Doc.) Barker had wore when he was questioned. I was handcuffed to one end of an iron cot, my feet shackled to the other end, and in this predicament I was questioned and threatened continuously. When I asked to see a lawyer, I was told, the last man that was in that room that wanted to see a lawyer was left alone and he went out through the window after one, and was killed in the fall. At about 5 o'clock P.M., June 2nd 1935 I was put in a car with the curtains down and taken to the air port at 63rd Street and Cicero, by seven F.B.I. men. I was put on a plane and flew to Madison, Wisconsin. The seven F.B.I. men and I were kept in the plane at Madison, after several false starts, until about 3 o'clock A.M. of June 3, 1935. We then flew to St. Paul, Minn., and I was taken to the federal building in St. Paul. I was handcuffed to a radiator and questioned again. I was told if I plead guilty to conspiracy I would be given a term of years. When I ask the F.B.I. men about seeing a lawyer, they told me I didn't need one and that they would be my lawyer. They told me if I ever wanted to eat and sleep I would have to agree to plead guilty. I told them I would admit knowing some of the people they asked about and they said that was conspiracy. So I agreed to plead guilty to conspiracy for a term of years. I was then given something to eat and taken before the Judge, Honorable M. M. Joyce. He asked me if I had agreed to enter a plea of guilty. I replied I had, to the minor charge of conspiracy. He asked me if I wanted the indictment read and I replied, Yes. They read a long list of names of people that was charged in the same indictment. After it was read the Judge M. M. Joyce, told the F.B.I. men to turn me over to the U. S. Marshal and for him to take me to jail. I was taken to the Ramsey County jail and put in a solitary cell. I was held incommunicado until June 7, 1935. At 9 o'clock that morning I was taken with

"four other prisoners, charged in the same indictment, before the Honorable M. M. Joyce for sentencing. I was called first, before the Honorable M. M. Joyce. He said, you have entered a plea of guilty to conspiracy and he proceeded to sentence me. He did not give me a chance to speak for myself or ask if I wanted any one to speak for me. He just sentenced me to life at hard labor. The other prisoners charged in the same indictment were called one at a time. Each one had a lawyer to talk to the Judge in his behalf. Two were given sentences of twenty years each. Two were sentenced to five years each.

BRIEF

"I was never put in jail until after I entered my plea or allowed to talk or contact any one, from the time of my arrest until I was sentenced. Instead I was kept hid in the offices of the F.B.I. handcuffed and shackled, without food, water or sleep. My face was covered when they were forced to take me from one car to another. The curtains in the cars and planes were kept closed and the blinds in the rooms were kept down.

"III. Because I received a sentence of life for violation of the act of Title 18, 408A. C.C. June 22, 1932 C. 271, I, 47, Stat. 326 which clearly states: 'Shall upon conviction, be punished by imprisonment in the penitentiary for <u>such term of years</u> as the court, in its discretion, shall determine.'

"By what form of reasoning can a life sentence be construed, as a term of years?

"4. Because in the case, Johnson vs. Zerbst, U.S. 58 S. Ct. 1019 to 1025, The Supreme Court held that: 'If the accused is not represented by counsel and has not competently and intelligently waived his constitutional right, the jurisdiction of the court is lost, the judgment of conviction pronounced by the court is void, and release from imprisonment may be obtained by habeas corpus."

"So, according to the opinion of the Supreme Court the trial court had no jurisdiction and the petitioners proper remedy is by writ of habeas corpus.

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"Johnson vs. Zerbst, U.S. 58 S.Ct. 1019 to 1025. Congress has expanded the rights of a petitioner for habeas corpus, and the effect is to substitute for the bare legal review that was the limit of judicial authority at common law, a more searching investigation in which the applicant isput on his oath to set forth the truth of the matter respecting the causes of his detention, and the court, upon determining the actual fact, is to dispose of the party as law and justice require. 28 U.S.C.A. Sec. 451 et.sep.

"This above paragraph is the cause of so much explanation in this petition of the procedure before petitioner's plea of guilty.

"Johnson vs. Zerbst, further states: Johnson vs. Zerbst, U.S. 58 S.Ct. 1019 to 1025; Where in habeas corpus, it appears that the petitioner was convicted without having the assistance of counsel, but the District Court made no finding as to a waiver by the petitioner of the rights to the assistance of counsel the cause will be remanded.

"Petitioner being inexperienced in legal proceedings, prays this Honorable Court for assistance of legal counsel in the case at bar. Jursidiction to appoint counsel is conferred on this court by constitutional amendment 6 and Title 28, Section 835, U.S.C.A.

"Wherefore, the petitioner prays that a writ of habeas corpus be issued out of this Honorable Court directing that the said respondent bring the body of the petitioner before this court, that he may be released from further unlawful custody.

"/s/ Volney Davis
Petitioner "

The files of the United States Attorney, St. Paul, Minnesota, reflect the following copies of affidavits filed in the United States District Court for the Northern District of California, Southern Division, in 1940, to oppose the petition of VOLNEY DAVIS who set forth the same eight grounds for relief as set forth in the above mentioned peititon filed by VOLNEY DAVIS on December 5, 1952 with the Clerk of United States District Court for the District of Minnesota, Third Division:

MP #7-30

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"VOLNEY DAIVS,
PETITIONER,

-vs-

"JAMES A JOHNSTON, WARDEN,
UNITED STATES PENITENTIARY,
ALCATRAZ, CALIFORNIA

RESPONDENT.

AFFIDAVIT

"STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

"Matthew M. Joyce, being first duly sworn, on oath deposes and says that he was on the 3rd day of June, 1935, and at all times since has been a judge of the United States District Court for the District of Minnesota, and was the judge before whom the above named petitioner was arraigned and before whom he entered his plea and who sentenced the said petitioner as one of those involved in the so-called Bremer kidnapping cases in St. Paul, Minnesota. That the indictment returned by the United States Grand Jury for the District of Minnesota against Volney Davis and others bore docket numbered 6096 Criminal, Third Division, District of Minnesota, and affiant was advised on the morning of June 3, 1935, that the defendant Volney Davis desired to be arraigned and enter his plea to said indictment. That at approximately the hour of ten A.M. on said date said Davis was brought before affiant in open court, at which time affiant made inquiry of said Davis as to whether or not it was true he desired to enter his plea, said Davis answering in the affirmative; at which time affiant also asked said Davis whether he was represented by counsel, or wanted counsel, or had funds whereby he might employ counsel. Said Davis responded that he did not desire counsel and was ready to enter his plea but he did want the indictment in the case read to him; whereupon affiant directed the deputy clerk of the court then present to read the said indictmentinvolving said Davis to said Davis, which was done. Said Davis was then asked what his plea to said indictment was and he answered by using the word 'Guilty'. That then and there this affiant stated that sentence would be pronounced on the said Davis on the 7th day of June, 1935, and affiant then left the bench.

"That between the 3rd day of June, 1935 and the 7th day of June, 1935 this affiant heard nothing from said Davis or from anyone

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"in his behalf. That sentence was imposed per schedule on the 7th day of June, 1935, at which time said Davis made no statement or claim that he had been mistreated, abused or mishandled in any manner, shape or form. That on the occasion of said Davis' two appearances before affiant, affiant was impressed with his apparent neatness, pre-possessing looks and intelligence and felt that from what he said and the responses made he understood what was being done in connection with his case, and at no time was he under any apparent stress or acting under compulsion, or so far as affiant could determine, the victim of any duress or threats. That this affiant, had he not known of the complicity of the defendant Davis in the kidnapping of Edward Bremer, might well have concluded, for aught there was to suggest otherwise, that the said defendant was a well groomed and intelligent clerk in a banking or mercantile institution.

"Affiant states further that it is his opinion from his observation of said Davis and the statements made by him and the manner whereby the same were made, that he fully understood and knew the significance of the proceedings in which he was then involved before the court and that he knew and understood the significance of his waiving the right to counsel and of the plea which he entered following the reading of the indictment to him.

"Affiant further states that the order amending the judgment in the case of United States of America, plaintiff, vs. Volney Davis, defendant, bearing date of October 10, 1939, and filed in the Clerk's office of the United States District Court, District of Minnesota, Third Division, in docket numbered 6096, Criminal, was made and filed in order to correct a clerical error on the part of the acting Deputy Clerk of said court, which error is now explained by the affidavit of Joseph T. Lynch, at that time said acting Deputy Clerk of said court.

"Further affiant sayeth not except that this affidavit is made for use in opposition to the petition of said Volney Davis for a writ of habeas corpus herein.

"Subscribed and sworn to before
me this 11th day of April, 1940.

_____
"Deputy Clerk, United States District
Court, District of Minnesota

"

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Assistant United States Attorney ALEX DIM, St. Paul, recommended that Judge JOYCE not be reinterviewed concerning his affidavit.

GEORGE F. SULLIVAN (Deceased)

"VOLNEY DAVIS,
PETITIONER,

vs.

"JAMES A. JOHNSTON, WARDEN,
UNITED STATES PENITENTIARY,
ALCATRAZ, CALIFORNIA.
RESPONDENT

"STATE OF MINNESOTA)
) SS.
"COUNTY OF RAMSEY)

AFFIDAVIT

"George F. Sullivan, being first duly sworn, on oathe deposes and says that since the 1st day of September, 1937, he has been and now is a Judge of the United States District Court for the District of Minnesota; that on the 3rd day of June, 1935, he was and had been for some two years prior thereto the United States Attorney for the District of Minnesota and as such had direct charge of the prosecution of the so-called Edward G. Bremer kidnaping case from beginning to conclusion, including among other indictments the conspiracy indictment involved in the foregoing entitled proceeding, which bore docket number 6096 Criminal, Third Division, District of Minnesota: that the prosecution of the several defendants in the said kidnaping case aroused widespread public interest and for that reason, among others, affiant has had occasion to recall and recollect many incidents connected with the several phases of the prosecution, and affiant now recalls to memory certain events incident to the arraignment, plea of guilty, and sentence imposed on the above named Volney Davis in respect to the said indictment numbered 6096 Criminal, as follows, to-wit:

"That on the morning of June 3, 1935, he was advised at his office in the Federal Courts Building, St. Paul, Minnesota, by Agents John E. Brennan and Harold E. Anderson of the Federal Bureau of Investigation of the Department of Justice that said Davis was in custody at St. Paul, and that he desired to enter a plea of guilty to the Bremer kidnaping

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"conspiracy charge, being said indictment number 6096 Criminal; that he advised the Agents that he would confer with the Honorable Matthew M. Joyce, a Judge of the United States District Court, who was then holding Court in said building and who had charge of the disposition of the said kidnaping case, and that he did thereupon confer with Judge Joyce with reference to the arraignment of said Davis and was advised by said Judge that he might bring on the arraignment at 10:00 A.M. of that day:

"That he had no talk with said Davis save and except as he met him in the corridor adjacent to the Court Room where he asked Davis whether or not he had a lawyer, and Davis replied that he did not but was guilty and wanted 'to get the matter over with as quickly as possible': that neither Davis nor affiant said anything with reference to the nature of the charge on which he was going to be arraigned:

That Davis, the two Agents, John E. Brennan and Harold E. Anderson, as affiant recalls, and affiant, stepped into the Court Room where Judge Joyce was on the bench; that Joseph Lynch, Deputy Clerk of Court, was in attendance on the Court; that Judge Joyce recognized affiant who thereupon moved the arraignment of said Davis on the said indictment charging conspiracy to kidnap Edward G. Bremer; that Judge Joyce thereupon asked the defendant whether or not he had counsel and defendant answered 'no'; that the Judge thereupon asked Davis whether or not he desired the services of counsel and stated that if he did not have the funds with which to employ counsel that the Court would appoint one for him; that said Davis responded that he was guilty and again stated that he wanted 'to get the matter over with as quickly as possible' and that he did not want a lawyer; that the said indictment was thereupon read to the said defendant by Deputy Clerk of Court Lynch and upon the conclusion of the reading the Deputy Clerk asked the said defendant whether his plea was guilty or not guilty, and the said defendant, Davis, responded 'guilty', whereupon the Court instructed the Clerk to enter a plea of guilty on the minutes of the Court and ordered that sentence be deferred to June 7, 1935.

"Affiant further recalls and says that on said day, June 7, 1935, the said Volney Davis, together with John Joseph McLaughlin, Harold Allerton, Elmer Farmer, and James J. Wilson, who had been convicted under the same indictment after a jury trial, appears in Court and was sentenced on the said day.

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"Further affiant sayeth not except that this affidavit is made for use in opposition to the petition of said Volney Davis for a writ of habeas corpus herein.

"Subscribed and sworn to before
me this 9th day of April, A.D., 1940

"

JOSEPH T. LYNCH

"VOLNEY DAVIS,)
Petitioner)
)
vs.)
)
" JAMES A. JOHNSTON, WARDEN,)
United States Penitentiary,)
Alcatraz, California)

"STATE OF MINNESOTA)
) SS
"COUNTY OF RAMSEY)

AFFIDAVIT

"Joseph T. Lynch, being first duly sworn, deposes and says that he lives at 1610 Beach Street, St. Paul, Minnesota; that on the seventh day of June, 1935, and for more than a year prior thereto and for about one year subsequent to said date he was a duly qualified and acting Deputy Clerk of the United States District Court for the District of Minnesota attached to that office at St. Paul, Minnesota, in the Third Division of said District; that he was present in his official capacity as such Deputy Clerk of Court in the courtroom at St. Paul, Minnesota, recording the proceedings had in the above entitled case, relating to the indictment involved in the above entitled case, being Criminal No. 6096, Third Division, on the third day of June, 1935, at the time the above named Volney Davis entered his plea of guilty therein to the indictment aforesaid before the Honorable Matthew M. Joyce presiding; that, particularly because of the widespread interest that attached to the foregoing case, it being one of the so-called Bremer kidnaping cases, he distinctly recalls the following circumstances incident to the entry of a plea of guilty to the indictment then and there by said Volney Davis, to-wit:

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"That said Davis appeared without counsel before the Honorable Matthew M. Joyce, presiding, who asked said Davis if he had counsel and the answer was 'no'; that the Judge then asked Davis whether he desired to have counsel before being arraigned on the indictment and Davis again said 'no'; that his recollection is that the Judge then inquired of the defendant whether he realized the seriousness of the charge laid in the indictment and said Davis replied that 'he believed he did'; that the Judge then said that if it was a matter of lack of funds which caused the defendant to be without counsel that the Court would appoint counsel to represent him, but said Davis answered 'No, I want to get this matter over with' or words to that effect, and that he wanted to plead to the indictment; that affiant then read the indictment in its entirety and then asked Davis what his plea to the indictment would be, whereupon said Davis answered 'Guilty'; that the Judge thereupon deferred sentence to a later date.

"That immediately following the said plea of guilty by said Volney Davis herein affiant recalls that he entered and recorded in the term minutes of the said Court of that day a true and correct statement of the proceedings so had at the time of said plea as they appear in said minutes of the Court as follows:

'IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT OF MINNESOTA, THIRD DIVISION

'TERM MINUTES APRIL TERM A. D. 1935 June 3, 1935

"Monday morning
Court opened pursuant to adjournment
Present:-Honorable MATTHEW M. JOYCE, Judge.

The United States)
vs.) No. 6096 Criminal
Alvin Karpavicz, et al.)

"The United States Attorney, Geo. F. Sullivan, being present the defendant Volney Davis appears and is arraigned. Upon being questioned by the Court said defendant stated that he did not desire the advice of counsel and entered a plea of guilty to the charge in the indictment herein.

"Whereupon, it is by the Court
ORDERED: That sentence be and same hereby is deferred to June 7, 1935."

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"Affiant further says that he was present in the above named Court on the seventh day of June, 1935, in his official capacity as such Deputy Clerk of the Court to record the proceedings relating to the sentence then and there imposed by said Honorable Matthew M. Joyce, Judge of said Court, in the case as to said Volney Davis and several other defendants sentenced in the same case at the same time; that all the other said defendants appeared at said time with their attorneys and that when affiant immediately thereafter entered the sentences and judgments he recorded that the other said defendants appeared by counsel and through a clerical mistake followed the same form of judgment with reference to said Volney Davis, and thereby erroneously recorded his appearance as by counsel, whereas in truth and in fact said Davis had not appeared by counsel, as affiant well knew and as appears of record by the said term minutes of June 3 so then and there entered by affiant wherein it truthfully appeared that upon being questioned by the Court said defendant stated that he did not desire the advice of counsel.

"Further affiant sayeth not except that this affidavit is made for the purpose of being used in opposition to the petition of said Volney Davis for a writ of habeas corpus herein.

"/s/ JOSEPH T. LYNCH

"Subscribed and sworn to before
me this 9th day of April, 1940
"/s/ WILLIAM H. ECKLEY
Deputy Clerk, U. S. District Court
District of Minnesota. "

WILLIAM H. ECKLEY

"VOLNEY DAVIS,)
PETITIONER)
)
vs.)
)
"JAMES A. JOHNSTON, WARDEN,)
United States Penitentiary,)
Alcatraz, California)

"STATE OF MINNESOTA)
) SS. AFFIDAVIT
COUNTY OF RAMSEY)

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"William H. Eckley, being first duly sworn, deposes and says that on the third day of June, 1935, he was and ever since has been a Deputy Clerk of the United States District Court for the District of Minnesota attached to that office at St. Paul, Minnesota, in the Third Division of said Court; that he was present in the courtroom at St. Paul, Minnesota on the third day of June, 1935, at the time the above named Volney Davis entered his plea of guilty therein to the indictment in the foregoing entitled case before the Honorable Matthew M. Joyce, presiding; that he was not at the time acting in his official capacity as such Deputy Clerk in the matter of recording the proceedings had, but was an interested bystander; that the foregoing entitled case, being one of the so-called Bremer kidnaping cases, attracted wide and intense interest and that he clearly recalls the following circumstances incident to the said plea of guilty so then and there entered by said Volney Davis, to-wit: that George F. Sullivan, who was then the United States Attorney for the District of Minnesota, appeared for the United States at the said arraignment of said Davis, that the said Volney Davis appeared without counsel, that the said United States Attorney then moved the arraignment of said Davis in the foregoing entitled action, being Docket #6096 criminal, Third Division; that Judge Joyce thereupon inquired from said Davis whether he was represented by counsel in the matter and the answer was 'no'. The Court then inquired from said Davis whether he desired the assistance of counsel before entering his plea and said Davis answered that he did not; that said Davis was thereupon duly arraigned and that the said indictment was then and there read to him by Joseph T. Lynch who was then and there acting as Deputy Clerk of the above named Court in recording said proceedings, and after the said indictment was so read the said Volney Davis entered his plea of guilty thereto and thereupon sentence was deferred to a later date.

"Further affiant sayeth not except that this affidavit is made for the purpose of being used in opposition to the Petition of the said Volney Davis for a Writ of Habeas Corpus herein."

MP #7-30

SF:DMD

SAMUEL W. HARDY

"VOLNEY DAVIS,
PETITIONER

vs.

"JAMES A. JOHNSTON, WARDEN,
UNITED STATES PENITENTIARY,
ALCATRAZ, CALIFORNIA,
RESPONDENT

AFFIDAVIT

"STATE OF MINNESOTA)
) SS.
"COUNTY OF RAMSEY)

"Samuel W. Hardy, being first duly sworn, deposes and says that on the 3rd day of June, 1935, and for several years prior thereo he was and is now a Special Agent of the Federal Bureau of Investigation, United States Department of Justice, and is attached to the St. Paul, Minnesota Office of that organization.

"That with respect to the plea of guilty entered to the indictment in the Bremer kidnaping case by the above named Volney Davis he recalls certain circumstances connected therewith as follows, to-wit: That on the morning of June 3, 1935, prior to the arraignment of Volney Davis, he had a conversation with Volney Davis in the office of the Federal Bureau of Investigation at St. Paul, Minnesota, with respect to the Bremer kidnaping case, at which time Volney Davis stated that it was his intention to enter a plea of guilty to the indictment charging him in that case. Mr. Davis stated he desired to enter a plea of guilty in that kidnaping case as soon as possible and to get the matter over with. Affiant asked Davis if he had a lawyer and Davis stated that he did not have a lawyer and that he did not want a lawyer; that he had been in trouble on several occasions before and had served time in the penitentiary and that he knew more law than most lawyers and that he did not need a lawyer; that he intended to plead guilty to the charge and that he did not need a lawyer to enter a plea for him and that he could do that himself. He stated, furthermore, that he had several hundred dollars and he did not intend to give that to any lawyer as he wanted his people to get that money rather than any lawyer. Affiant further advised Davis that if he desired a lawyer the Court would appoint one for him at no cost to him, but Davis stated that he did not need any lawyer and did not want any.

"Affiant further states that Davis stated that he had given a detailed statement of all of his connection with this kidnaping case and that a lawyer could not do him any good as he was guilty and he wanted to get the matter of pleading guilty over as soon as possible.

"Affiant further states that Davis appeared to be quite an intelligent person at the time of this conversation, June 3, 1935, prior to the entry of his plea of guilty in said case.

"Affiant has been advised that Volney Davis states in his petition for a Writ herein that he was handcuffed to a radiator at the St. Paul FBI Office. Affiant denied thatVolney Davis was handcuffed to a radiator during the time affiant had the above conversation with him at the St. Paul FBI Office, and Volney Davis was not handcuffed to a radiator in the St. Paul FBI Office at any time when affiant was in Davis' presence.

"Further with reference to the statement of said Davis in his said petition that he was told by FBI men at St. Paul that he would be given a term of years if he plead guilty to conspiracy herein, affiant says that there was no conversation whatever between affiant and Davis as to what sentence he might receive if he entered a plea of guilty.

"Further with respect to Davis' statement in his petition that he was told by FBI Agents that if he ever wanted to eat or sleep he would have to plead guilty. Affiant denied that any such statement was ever made by him to Davis or that such statement was ever made by anyone else to Davis in affiant's presence.

"Further affiant sayeth not except that this Affidavit is made for use in opposition to the petition of said Volney Davis for a Writ of Habeas Corpus herein.

"/s/ SAMUEL W. HARDY

"Subscribed and sworn to before me
this _____ day of April, A.D. 1940.

"

SA SAMUEL W. HARDY was reinterviewed at the Minneapolis Office on February 11, 1954, at which time he furnished the following signed statement:

MP #7-30

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"Minneapolis, Minnesota
February 11, 1954

"I, Samuel W. Hardy, give the following statement of my own free will to Special Agent Sigurd Flaata of the Federal Burau of Investigation. I have been a special agent of the Federal Bureau of Investigation since March 28, 1925. I am so employed at the present time.

"On April 9, 1940, I made an affidavit concerning matters with respect to Volney Davis which transpired on or about June 3, 1935, at St. Paul, Minnesota. This affidavit is before me at the present time. I have read it. This affidavit was in connection with a writ of habeas corpus which Volney Davis had filed in the United States District Court of the Northern District of California.

"That affidavit given by me was true when it was made. It is true now. There is nothing further that I can add to it. I reaffirm the affidavit.

"/s/ SAMUEL W. HARDY

SAMUEL W. HARDY

"WITNESS:

"/s/ Sigurd Flaata
Sigurd Flaata, Special Agent, FBI

"/s/ Gloria Marra
Gloria Marra

JAMES M. KLEES

"VOLNEY DAVIS,
PETITIONER

vs.

"JAMES A. JOHNSTON, WARDEN
United States Penitentiary
Alcatraz, California, Respondent

AFFIDAVIT

MP #7-30

SF:DMD

"STATE OF MINNESOTA)
) SS
"COUNTY OF RAMSEY)

"James M. Klees, being first duly sworn, on oath deposes and says that he resides at 1972 Lincoln Avenue, Saint Paul, Minnesota; that he is now attorney connected with the Saint Paul Sub-Regional Office of the United States Securities and Exchange Commission; that on the third day of June, 1935, and for a year or more prior to that date, he was a Special Agent of the Federal Bureau of Investigation assigned to the Saint Paul office;

"That with respect to the plea of guilty entered to the indictment in the Bremer Kidnaping Case by the above named Volney Davis, he recalls certain circumstances connected therewith as follows, to-wit:

"That on the morning of June 3, 1935, prior to the arraignment of Volney Davis, he in company with Harold E. Anderson, Special Agent in Charge of the Saint Paul office of the Federal Bureau of Investigation, as well as other Special Agents, including Samuel W. Hardy and John Brennan, went to the Wold Chamberlain Airport in Minneapolis, Minnesota, and met a plane in which the above named Volney Davis arrived in custody of the agents of the Federal Bureau of Investigation's Chicago Office and took Volney Davis to the offices of the Federal Bureau of Investigation on the second floor of the Federal Courts Building in Saint Paul, your affiant driving the car in which Davis and two agents rode in the rear seat.

"After entering the offices in the Federal Courts Building, the handcuffs were removed from Volney Davis and about 7:30 in the morning a breakfast was brought in for Volney Davis. Your affiant recalls that the knife and fork were taken from Volney Davis, and he was allowed to eat with a spoon; some remarks were made by Volney Davis with regard to this action to the effect that he wondered if we were afraid he would commit suicide. After he had completed his meal, he was given a cigarette by the agents who were in the room at the time, who, as your affiant recalls, were Samuel Hardy, Jack Brennan and your affiant; Harold E. Anderson was in this room at intervals during the morning, but after some casual conversation with Volney Davis, he had returned to his office which was located on the same floor but somewhat removed from the room in which Volney Davis was being held; that some conversation was carried on with Volney Davis by Agent Brennan which concerned Saint Louis,

"Missouri, and a girl whom Volney Davis was known to have had in that city. The conversation was in a bantering tone and in the midst of this conversation Volney Davis stated, as I recall, "You fellows have it on me. I'll cop a plea;" Your affiant then leaving, and Davis, Hardy and Brennan as I recall it in the room, went to the office of the Special Agent in Charge, Harold Anderson, and advised him of the fact that Volney Davis had stated he would plead guilty.

"That as I recall, there was no conversation by any Agent in the room while I was present concerning what sentence might be imposed on this guilty plea, and I heard no statement of any kind by anyone which indicated that Volney Davis would be given a term of years if he entered a guilty plea to the conspiracy indictment; that from the time of his arrival in Saint Paul by said plane, said Davis was treated courteously in every respect by affiant and said other agents and affiant neither saw nor heard anything by way of threat, intimidation, coercion of said Davis to obtain a plea of guilty from him or to induce him to enter such plea.

"That at all times during the three or more hours Volney Davis was in the custody of the Agents of the Federal Bureau of Investigation in their offices, he seemed to be in a pleasant mood and seemed to understand exactly what was going on. Around ten o'clock of that morning, we were advised that he would be arraigned before Judge Joyce in the Courtroom in the same building, and preparations were made to take him up to the Courtroom. He was handcuffed to Agent Brennan and your affiant, but before leaving the room he asked if there were any newspaper men in the hall. He was advised that there were a number of newspaper men in the corridors and stated that he did not want his picture taken and requested that he be allowed to cover his face. You affiant then removed the handcuffs from Volney Davis and himself, and Volney Davis was able to, and did, cover his face with a cap he had in his left hand.

"Affiant further says that either on the 3rd of June, 1935 or the 7th of June, 1935, but, in any event, prior to the imposition of sentence on said Davis by Judge Joyce in this matter, that Edward G. Bremer, the said kidnaped victim, came to our office in the said Federal Building at St. Paul while Volney Davis was there. Volney Davis was seated in a chair behind a desk in this office and Agent Brennan asked Edward G. Bremer, the kidnaped victim, whether or not he recognized this man. Mr. Bremer said he did not. Agent Brennan thereupon asked

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"Volney Davis if he recognized Bremer and he stated he had never seen him before. Then Mr. Bremer was advised as to the identity of Volney Davis and Volney Davis was advised as to the identity of Mr. Bremer. Mr. Bremer thereupon stated to Volney Davis that he had suffered considerably due to his experience and that 'It was a hell of a thing to do to anyone.' Volney Davis thereupon stated that he (Bremer) should have no further worries, that he had paid off and would never be bothered again. I would assume that Mr. Bremer was in the room with the agents and Volney Davis for perhaps fifteen or twenty minutes and then Volney Davis was taken to the Courtroom. As he was leaving the office he turned to Mr. Bremer and stated, 'I am sorry for what we did to you.'

"Affiant further says that based upon my observation and conversation with said Volney Davis from the time of his arrival in St. Paul until he was turned over to the custody of the United States Marshal that he impressed me as being an individual of more than average intelligence and appreciated the significance of his arrest and the implications of the charges against him in the indictment as well as the possible penalties that might be imposed.

"Further affiant sayeth not.

"/s/ JAMES M. KLEES

"Subscribed and sworn to before me
this 12th day of April, A.D. 1940

WILLIAM H. ECKLEY
Deputy Clerk, U. S. District Court, District of Minnesota "

JOHN E. BRENNAN

"CITY OF ST. LOUIS)
) SS
"STATE OF MISSOURI)

"John E. Brennan, being first duly sworn, upon his oath, says:

"That he is now and has been for the past twenty years a Special Agent of the Federal Bureau of Investigation, U. S. Department of Justice, and is at present assigned to the St. Louis Division thereof.

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"That in January of 1934 he was specially assigned to the investigation of the kidnaping of Edward G. Bremer at St. Paul, Minnesota, and was continuously engaged thereafter on said assignment until the disposition of the criminal cases resulting from said investigation in the summer of 1936. That in the course of said investigation he had occasion to meet numerous defendants charged with the kidnaping of said Edward G. Bremer or charged with being accessories thereto, numbered among whom was one Volney Davis, the circumstances relatingto whom being as follows, to-wit:

"That on or about June 3, 1935, affiant accompanied Special Agent in Charge Harold E. Anderson and Special Agent Samuel W. Hardy, and other Special Agents of the Federal Bureau of Investigation, to the Municipal Airport at Minneapolis, Minnesota, where the said Volney Davis was delivered to the custody of the said Harold E. Andersen by Special Agents of the Chicago Division of the Federal Bureau of Investigation, who had theretofore transported the said Davis from Chicago, Illinois, to Minneapolis, Minnesota, by airplane. That the said Davis was thereupon placed in the immediate custody of affiant by the said Harold E. Andersen. That affiant thereupon did handcuff the said Davis to affiant, thus to insure his custody, whereupon the said Davis was placed in an automobile driven by the said Special Agent Samuel W. Hardy and, accompanied by Special Agent in Charge Harold E. Andersen, was thereupon transported to the St. Paul Office of the Federal Bureau of Investigation in the Federal Building at St. Paul, Minnesota. That upon arrival in the St. Paul Office of the Federal Bureau of Investigation, the handcuff was removed from affiant and placed on the wrist of the said Volney Davis who was thereupon seated in a chair adjoining one of the desks in the said office. That thereupon there ensued a conversation between affiant and the defendant, Volney Davis, with respect to the disposition of the charge then pending against him, wherein the said Volney Davis was then informed that he was charged as being one of the several who had actually kidnaped Edward G. Bremer at St. Paul, Minnesota, and had transported him from Minnesota to the State of Illinois. That Davis stated he had not kidnaped or transported the said Bremer. That he was thereupon informed that he might engage an attorney, who could advise him as to the plea he might make to the indictment then pending against him; that should be enter a plea of not guilty he would be held in the County Jail pending trial; that if he elected to enter a plea of guilty he would immediately be taken before a judge of the U. S. District Court. That the said Volney Davis stated he had a certain amount of money, approximately $1,000.00, which was

"not money used in payment of the ransom of the aforesaid Edward G. Bremer; that he could use such money in payment of a fee to an attorney for defense against the indictment then pending against him, but that inasmuch as he had not theretofore contributed to the support of his mother, who was in dire need, he felt that it would be of more benefit to him to assign such funds as had been found in his possession for the use of his mother than to give them to 'some jack-leg lawyer, who could not keep him out of jail, anyway'; that he would prefer not to have a lawyer but to enter a plea of guilty to the indictment then pending against him and assign such funds as heretofore mentioned for the benefit of his parent. That the said Volney Davis repeated his intention of dispensing with the services of counsel to Special Agent in Charge Harold E. Andersen of the St. Paul Office of the Federal Bureau of Investigation, and while being detained in the St. Paul Office of the Federal Bureau of Investigation pending the convening of the U. S. District Court, made substantially the same statement to Special Agent Smauel W. Hardy. That about 10:00 o'clock A.M. on the same day, June 3, 1935, the defendant, Volney Davis, was taken by affiant before the Honorable M. M. Joyce, Judge of the U. S. District Court for the District of Minnesota, where the indictment pending against the said Davis was read to him. That in response to the query of the court as to whether or not he, the said Davis, desired to be represented by counsel, the defendant, Davis, replied in the negative, whereupon his plea of guilty to the charge contained in the indictment was received and entered, and the said Davis was thereupon formally delivered to the custody of the U. S. Marshal by affiant. That thereafter the said Volney Davis was taken to the Ramsey County Jail at St. Paul by the U. S. Marshal, accompanied by affiant, upon commitment issued by the U. S. District Court.

"Affiant further says that he has read the affidavit filed by the said Volney Davis in the U. S. District Court for the Northern District of California, Southern Division, in support of a petition for a writ of habeas corpus, wherein the said Volney Davis sets forth that he was placed in a solitary cell in the Ramsey County Jail. Affiant further said that the said Volney Davis was not placed in a solitary cell in the Ramsey County Jail; that affiant visited with the said Volney Davis in the Ramsey County Jail nearly every day from the date of his incarceration on or about June 3, 1935 until he was removed to the U. S. Penitentiary at Leavenworth, and at no time was the said Davis in solitary confinement.

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"Affiant further says that on or about June 7, 1935, in company with the U.S. Marshal, he assited in the removal of the said Volney Davis and other defendants from the Ramsey County Jail to the U.S. District Court at St. Paul, Minnesota, where the said Volney Davis was sentenced by the Honorable M. M. Joyce to confinement in a penitentiary to be designated by the Attorney General for the rest of his, the said Volney Davis', natural life; that during the time that the said Volney Davis was held in the Ramsey County Jail at St. Paul between the date of entrance of his plea of guilty and disposition of said plea, the said Volney Davis received the same food and quarters as any other prisoner in said jail.

"Affiant denies that the said Volney Davis was at any time handcuffed to a radiator in the St. Paul Office of the Federal Bureau of Investigation. Affiant further denied that any statement was ever made to the said Davis, 'that if he ever wanted to eat or sleep, he would have to plead guilty,' but on the contrary that said plea of guilty was voluntarily entered by the said Volney Davis after having been fully informed of the charge then pending against him.

"Further affiant sayeth not.

"Signed) John E. Brennan

"Subscribed and sworn to before
me this 15th day of April, 1940.

(Signed) Jas. J. O'Connor
Clerk of the U. S. District Court,
Eastern District of Missouri.
by (Signed) John R. Oliver, Deputy. "

HAROLD E. ANDERSEN

"VOLNEY DAVIS.
Petitioner

vs.

"JAMES A. JOHNSTON, WARDEN,
United States Penitentiary,
Alcatraz, California,
Respondent

AFFIDAVIT

SF:DMD

"STATE OF OKLAHOMA)
) SS
"COUNTY OF OKLAHOMA)

"Harold E. Andersen, being first duly sworn, on oath deposes and says that during the month of June, 1935, he was Special Agent in Charge of the Federal Bureau of Investigation Field Division at St. Paul, Minnesota;

"That at approximately 6:00 a.m. on or about June 3, 1935, Volney Davis arrived at the Minneapolis, Minnesota Airport by airplane from Chicago, Illinois in custody of Bureau agnets; that Davis was immediately released to the custody of the affiant, Special Agent John E. Brennan, and other Agents of the Federal Bureau of Investigation;

"That immediately thereafter, he was taken by automobile to the office of the Federal Bureau of Investigation located in the Federal Building in St. Paul, Minnesota, where his handcuffs were removed and where he was served with a breakfast of his own selection.

"That shortly after his arrival at the Bureau Office before and after his breakfast, Davis talked frankly of his criminal escapades and mentioned his participation in the kidnaping of Edward G. Bremer;

"That during his conversations he plainly showed he was in full possession of his mental faculties and gave no indication that he did not understand the gravity of the situation and the possible sentence which he might receive;

"That after some conversation, he indicated his desire to enter a plea of guilty to the indictment charging him with a part in the Bremer kidnaping and asked that if possible arrangements be made for him to enter a plea that morning before being taken to the county jail;

"That he was informed of his right to counsel and trial which he stated he understood, adding that he did not want to be represented by counsel or go to trial as he was guilty of the charge he faced;

"In view of which, affiant conferred with the United States Attorney and United States District Judge Joyce, St. Paul, Minnesota and as the result of which Davis was arraigned before Judge Joyce at about 10:00 a.m. when he entered a plea of guilty to the indictment;

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"And finally, that Davis was at no time mistreated or subjected to duress, and he was advised that he might receive the maximum sentence if he pleaded guilty; notwithstanding he of his own free will pleaded guilty as indicated above.

"Further affiant sayeth not.

"/s/ Harold E. andersen

"Subscribed and sworn to before me
this 23 day of April, A.D. 1940

"/s/ Theodore M. Filson Clerk U. S. District Court
Western District of Oklahoma "

EDWARD R. PICHA

"VOLNEY DAVIS,
PETITIONER

vs.

"JAMES A. JOHNSTON, WARDEN
UNITED STATES PENITENTIARY,
ALCATRAZ, CALIFORNIA,
RESPONDENT

AFFIDAVIT

"STATE OF MINNESOTA)
) SS
"COUNTY OF RAMSEY)

"Edward R. Picha, being first duly sworn, on oath deposes and says that he resides at 391 Goodrich Avenue, St. Paul, Minnesota; that he was on the 3rd day of June, 1935, and for several years prior thereto he was and ever since has been and now is the court bailiff for Honorable Matthew M. Joyce, Judge of the United States District Court for the District of Minnesota, that on the 3rd day of June, 1935, he was present as such bailiff in Federal Court at St. Paul, Minnesota when the above named Volney Davis pleaded guilty to the indictment involved in the above entitled matter, the indictment bearing docket No. 6096 criminal, Third Division, District of Minnesota, charging said Volney Davis and others with a conspiracy to kidnap Edward G. Bremer, in violation of federal law;

"that he was also present in said Court as such bailiff on the 7th day of June, 1935, when sentence of life imprisonment was imposed on said Davis in the above entitled matter; that he was also one of the guards who shortly after the said sentence was imposed assited the United States Marshal for the District of Minnesota and his deputies in transporting said Davis from St. Paul, Minnesota to the United States Penitentiary at Leavenworth, Kansas, and distinctly recalls certain circumstances incident to the said plea of guilty by said Davis, the pronouncement of sentence thereon and the trip from St. Paul, Minnesota to Leavenworth, Kansas, as follows, to-wit:

"That Honorable George F. Sullivan, who is now a judge of the United States District Court for the District of Minnesota, but who was then the United States Attorney for the District of Minnesota, was present in the Federal Court representing the United States on the 3rd day of June, 1935, when said Volney Davis was brought before the Honorable Matthew M. Joyce for arraignment on the said conspiracy indictment to kidnap Edward G. Bremmer; that Mr. Sullivan moved the arraignment of said Davis on the indictment; that said Davis was present without counsel, but Judge Joyce then and there asked him before his arraignment whether he desired to have the assistance of counsel and stated that if he was without funds, the Court would appoint an attorney for him. The defendant answered, however, that he did not care to have a lawyer; that Judge Joyce asked said Davis if he wanted to have the indictment read and Davis replied that he did; whereupon Joseph T. Lynch, the Deputy Clerk of Court, read the indictment, after which Davis was asked how he would plead to the indictment and he responded 'guilty'; the Court thereupon directed that the sentence be deferred to June 7, 1953.

"Affiant further recalls that he was present in said Court as such bailiff on the 7th day of June, 1935, when a life sentence was pronounced as to said Davis in consequence of his plea of guilty to the said indictment and affiant recalls that after the sentence was so imposed, said Davis was seated in a jury box in said court beside certain other defendants who were charged on the same indictment and who were sentenced on the same day; that as said Davis so became seated he held up his hand with two fingers extended and said something to a person seated beside him, within the hearing of affiant, to the effect that this amounted to two life sentences because he, the said Davis, was already under a sentence for life for some state offense in some other state.

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"That while so acting as a guard on the trip from St. Paul, Minnesota to Leavenworth, Kansas with said Davis, as hereinbefore stated, affiant had a chance to observe said Davis and to talk with him on several occasions; that from his observations of Davis and his talks with him, affiant formed the belief and now believes that said Davis is an unusually shrewd and intelligent person and from his long experience in court as such bailiff and seeing people arraigned and sentenced in court, and from what he saw of said Davis in court at the time of his arraignment and the imposition of sentence, he says that said Davis, beyond any doubt, had a clear understanding of what his constitutional rights were with respect to having assistance of counsel and that he intelligently waived such assistance, and that said Davis, beyond any doubt, understood the nature of the charges to which he entered his plea of guilty and upon which sentence was imposed, and that he was quite at home in criminal court, and was particularly able to protect his own interests.

"Further affiant says that he recalls certain other incidents which took place with respect to the transportation of said Davis from St. Paul, Minnesota to Leavenworth, Kansas as follows: that upon arriving at Leavenworth, Kansas, it had been learned that Davis had concealed about his clothing certain metal watch springs which could be used successfully in unlocking handcuffs; that affiant noticed Davis had one of such springs in his hands and that he was able to shift the spring from hand to hand during a search by certain officers, thereby confusing the officers to a considerable extent in their effort to discover the said spring; that the officers subsequently discovered Davis had two or three other such springs concealed about his clothing and that because of this incident and other incidents, he related these facts to Judge Joyce soon thereafter, and has, therefore, had occasion to recall and to recollect ever since the hereinbefore recited facts, incidents to the said arraignment, and sentence of said Davis, as well as the general appearance, attitude, and conduct of said Davis, particularly with respect to his being a man of considerable intelligence; further affiant saith not, except that this affidavit is made for the purpose of being used in opposition to the petition of said Davis for a Writ of Habeas Corpus herein.

"/s/ Edward R. Picha

"Subscribed and sworn to before
me this 9th day of April, 1940.
"/s/ Thomas H. Howard
THOMAS H. HOWARD, Clerk, U. S.
District Court, District of Minnesota "

MP #7-30

SF:DMD

JOHN DE COURCY

"VOLNEY DAVIS,
PETITIONER,

-vs-

"JAMES A. JOHNSTON, WARDEN,
United States Penitentiary,
Alcatraz, California,
Respondent

A F F I D A V I T

"STATE OF MINNESOTA)
) SS
"COUNTY OF RAMSEY)

"John C. DeCourcy, being first duly sworn, on oath deposes and says that for many years prior hereto he has been continuously engaged in and duly licensed to practice of law at the City of St. Paul, Minnesota, and was so engaged on the Third Day of June, 1935 and that he now has his office at 306 St. Paul Building, in said city;

"That he recalls that during the year of 1935 he had occasion to talk with Volney Davis at the Ramsey County Jail at St. Paul, Minnesota, particularly in connection with the transfer of title to a Pontiac automobile;

"That the matter of discussion chiefly was with reference to the transfer of the car from Davis either to affiant or to the son of one Edna Murray;

"That this conversation took place during the summer of 1935 and just shortly before, it being possible that it was a day or two or three days before, said Davis was sentenced on his plea of guilty to an indictment in the Edward G. Bremer kidnapping case involved herein;

"That in connection with that case, affiant asked said Davis how things looked with reference to the outcome of his case; that said Davis thereupon replied that he was sunk and that there was nothing that could be done for him;

"That affiant further says that said Davis refused to make the car transfer;

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"That as affiant recalls it, the government had that car in the possession of the Kansas City Federal Bureau of Investigation office at that time;

"That I advised said Davis that I was an attorney at law at St. Paul and that I had been sent to him by Edna Murray, who was in jail at that time in connection with said Bremer kidnapping case and who was known to me to be a friend or girl friend of said Davis;

"That said Davis requested no legal assistance or advice from me or asked me to convey any message to anyone for him;

"Further, affiant sayeth not.

" JOHN C. DeCOURCY

"Subscribed and sworn to before me this
12 day of April, A. D. 1940.

" WILLIAM H. ECKLEY
Deputy Clerk, U. S. District Court,
District of Minnesota "

J. B. MACKAY

"VOLNEY DAVIS, PETITIONER,	)	
vs.	)	AFFIDAVIT
"JAMES A. JOHNSTON, WARDEN, UNITED STATES PENITENTIARY, ALCATRAZ, CALIFORNIA, RESPONDENT	)	

"STATE OF MINNESOTA)
) SS
"COUNTY OF RAMSEY)

"J. B. Mackay, being first duly sworn on oath deposes and says that he resides at 2123 Bayard Avenue, St. Paul, Minnesota, and that he

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"was employed on the 3rd day of June, 1935, and ever since that time by the Associated Press with office at St. Paul, Minnesota, it being among his duties to gather and report news for said Agency; that on the 3rd day of June, 1935, he reported to the St. Paul Pioneer Press, St. Paul, Minnesota, the substance of an interview he had at St. Paul on that day with the above named Volney Davis. That the substance of the of the interview was correctly published in the said St. Paul Pioneer Press in its issue of Tuesday, June 4, 1935, under the caption, 'Can't beat these G guys', Davis Says, 'Had it on me.'; that a true and correct photographic copy of the parts of the pages of said St. Paul Pioneer Press which carried the said interview under said heading is hereto attached and made a part hereof, bearing my signature on the back thereof; that the statements attributed to said Davis in said interview were made to me by said Davis as they are set forth in the said article.

"Further affiant saith not except that this affidavit is made for use in opposition to the petition of said Volney Davis for a writ of habeas corpus herein.

" J. B. MACKAY

"Subscribed and sworn to before me
this 12 day of April, 1940.

" WILLIAM H. ECKLEY
Deputy Clerk, U. S. District Court,
District of Minnesota "

ROBERT THOMPSON

"VOLNEY DAVIS,
PETITIONER

vs.

"JAMES A. JOHNSTON, WARDEN,
UNITED STATES PENITENTIARY,
ALCATRAZ, CALIFORNIA,
RESPONDENT

AFFIDAVIT

"STATE OF MINNESOTA)
) SS
"COUNTY OF RAMSEY)

MP #7-30

SF:DMD

"Robert Thompson, being first duly sworn, on oath deposes and says that he resides at 642 Lincoln Avenue, St. Paul, Minnesota, and that he was employed on the 3rd day of June, 1935, and ever since that time by the organization publishing the St. Paul Pioneer Press and St. Paul Dispatch at St. Paul, Minnesota, it being among his assignments at that time to cover the proceedings had in Court from time to time with reference to the criminal prosecution of the so-called Edward G. Bremer kidnaping case and to report the proceedings as news items to the said St. Paul Pioneer Press and St. Paul Dispatch published at St. Paul, Minnesota. That on the 3rd day of June, 1935, he was present in the Federal Court at St. Paul, Minnesota, when the above named Volney Davis entered his plea of guilty before the Honorable Matthew M. Joyce to the indictment charging Davis and others with the conspiracy to kidnap Edward G. Bremer. That he reported the said proceedings had at the time that said Davis so entered his plea which formed a basis for the article which was published in said St. Paul Dispatch on June 3, 1935 under the heading: 'VOLNEY DAVIS BROUGHT HERE BY PLANE. PLEADS GUILTY TO BREMER CONSPIRACY', and a true and correct photographic copy of the pages and columns of the said paper as the said article was so published is attached hereto and made a part hereof consisting of two pages bearing my initials on the back thereof.

"That the proceedings with respect to the conversation between Judge Joyce and said Davis at the time the said plea was entered took place as reported in said published article except that the article does not purport to set forth the entire conversation or proceedings, it being the recollection of affiant that in addition to the proceedings and conversation as reported, among other things, there was a question then and there put to said Davis by the said Judge concerning whether or not he desired the assistance of counsel, to which Davis replied, as affiant recalls, in rather a flippant manner, that he did not desire the assistance of any attorney; further affiant saith not.

" Robert Thompson

"Subscribed and sworn to before me this
18th day of April, A. D. 1940
" William H. Eckley
Deputy Clerk, U. S. District Court, District of Minnesota "

Assistant United States Attorney ALEX DIM has advised that the originals of the above affidavits are on file with the Clerk of the United States District Court for the Northern District of California, Southern Division, San Francisco, California, and that the same will be subpoenaed for the hearing.

MP #7-30 SF:AMG
-1-

The following information is being set forth from the report of SA R. C. SURAN dated June 10, 1935, at Chicago, in order to refresh the recollection of the agents who assisted in the apprehension, search, questioning and transportation of VOLNEY DAVIS, who was apprehended at Chicago, Illinois, on June 1, 1935:

"The following investigation was conducted by Special Agents H. A. MARTIN and E. H. WILLIAMS on May 29, 30, 31, and June 1, 1935:

"On Wednesday afternoon, May 29, 1935, agents proceeded to [redacted] b7c b7d where, according to instructions received from Special Agent in Charge M. H. PURVIS, they were to remain until a call was received from [redacted] indicating the probable arrival of subject VOLNEY DAVIS at her home, No call was received until approximately 2:30 P.M., Saturday, June 1. 1935, when [redacted] called and informed Special Agent MARTIN that "EVERETT" would be at her house in about one-half hour and was going to drive her to Anne's Beauty Parlor, the address of which she gave as 44th and Madison Streets. Special Agent MARTIN at once called the Chicago Bureau Office and relayed this information to Special Agent V. C. ZIMMER. Agents then proceeded by Bureau car to the corner of [redacted] where the car was parked on the northwest corner [redacted] facing south in order that a clear view of the front of [redacted] residence could be maintained. At approximately 2:55 P.M. a Ford V8 Coupe was observed driving north [redacted] passed the house of [redacted] this coupe, it was noted, bore Georgia license plates No. 37216C. The coupe was driven to the corner on which the Bureau car was parked and a "U" turn was made at the intersection. As the driver was making the said "U" turn Agents were able to get a clear view of his profile and immediately identified him as subject VOLNEY DAVIS. Subject then parked his car immediately in front of [redacted] house at [redacted], got out of the car and entered the house.

"At about 3:05 P.M. Special Agent in Charge M. H. PURVIS arrived, accompanied by several other agents of the Chicago Bureau Office, and took charge of the proceedings from there on. Special Agent MARTIN was instructed by Special Agent in Charge PURVIS to park the Bureau car, which he was driving, as close behind the car of the subject as possible and to remain in the car and when subject DAVIS came out of the house, Agent was to drive forward with the Bureau car to prevent possible escape by the subject in the event he should be able to get his car under way. These instructions were carried out

"by Agent MARTIN. Special Agent WILLIAMS was instructed to take up a surveillance of the rear of the house to prevent possible escape of subject by that means. These instructions were carried out by Special Agent WILLIAMS.

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b7d

"Immediately upon receipt of information from the Agents stationed [redacted] a check was made to determine the exact address of a beauty parlor located at 44th and Madison Streets, Chicago, Illinois. It was found that numerous beauty parlors under the names Anne's Beauty Parlor were located in Chicago. It appeared that the most likely one to be the one referred to [redacted] would be located at 4817 West Madison Street, Chicago, Illinois. Special Agent in Charge PURVIS then instructed Special Agents ZIMMER, C. JENKINS, E. F. EMRICH, F. M. HEADLEY, H. W. STEWART, and J. B. DICKERSON to proceed to that point to ascertain if DAVIS appeared there if efforts to apprehend him failed in the vicinity of [redacted] Efforts to apprehend him at this address were considered advisable in view of the indefinite information furnished by [redacted] as to the name of the beauty parlor.

"Special Agent in Charge PURVIS, Special Agents M. CHAFFETZ, M. J. CASSIDY, and R. C. SURAN proceeded immediately to the corner of [redacted] in Chicago, where Special Agents E. H. WILLIAMS and H. A. MARTIN were contacted. They pointed out subject's car in front of the address, [redacted], and advised that just a few minutes prior to the arrival of Special Agent in Charge PURVIS and the other Agents, DAVIS had entered the house and had been recognized by them. Special Agent in Charge PURVIS then instructed Special Agents M. CHAFFETZ and E. H. WILLIAMS to cover the rear of the address [redacted] Special Agents CHAFFETZ and WILLIAMS concealed themselves between a fence and a garage directly in the rear of [redacted], and in such a position so that these Agents could command a view of the rear door of the above address and could also see by the side of the house to the front sidewalk. Special Agent in Charge PURVIS and Special Agent SURAN concealed themselves near the doorway of the address, [redacted], in such a position that the front doorway of [redacted] could be observed. Special Agent M. J. CASSIDY concealed himself on the south side [redacted] Street, this being the opposite side from where Special Agent in Charge PURVIS and Special Agent SURAN were located. Special Agent CASSIDY could also observe the front doo[redacted] Special Agent H. A. MARTIN remained seated in a Bureau car

"to the rear of subject DAVIS' car, there being an automobile parked between the Bureau car and subject's car.

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"At approximately 3:20 P.M. subject DAVIS was seen to leave the address [redacted] accompanied by [redacted] Agents did not leave their positions until subject DAVIS left the sidewalk and proceeded toward his car. Special Agent in Charge PURVIS and Special Agents SURAN and CASSIDY then closed in on DAVIS. He was commanded to put up his hands. He moved toward his car and opened the door and Agent SURAN pushed closer to him, and making an effort to take hold of him, DAVIS fell down to the floor of the car in a sitting position with his feet extending from the car. Agent SURAN then commanded him to get up and as DAVIS did so he moved his arms forward in an outstretched position and struck Agent SURAN's gun, knocking Agent's arm against the side of the door, at which time the force of the strike caused an accidental discharge of Agent's gun, the bullet striking some metal object in the car, did not leave the car, and no one was injured. Agents CHAFFETZ, WILLIAMS, and MARTIN arrvied immediately at the scene to assist in taking DAVIS into custody. Subject DAVIS was immediately handcuffed and brought to the Chicago Bureau Office by Special Agent in Charge PURVIS, and Special Agents M. J. CASSIDY, R. C. SURAN, E. H. WILLIAMS, and M. CHAFFETZ following in the second Bureau car. Special Agent MARTIN was instructed by Special Agent in Charge PURVIS to proceed with subject DAVIS' car to the Clark-Van Buren garage and there treat the same for any possible latent fingerprints that might be found on the car. Agents MARTIN and CHAFFETZ treated the car for latent fingerprints and several were found on the left window sill, which prints were lifted by means of tape and forwarded by special delivery, air mail, to the Bureau for the purpose of comparison with prints of other subjects in this case still remaining at large. The Bureau advised by teletype on June 2, 1935, that the above latent prints submitted were partially identified as belonging to the left thumb of VOLNEY DAVIS, sufficient details in the prints not being available for positive conclusion.

"Special Agent CHAFFETZ searched the Ford car and found in the dash compartment thereof one Colt .380 automatic pistol No. 119702, which pistol was fully loaded Two extra No. .380 calibre clips, fully loaded, were also found in the compartment. In addition to the gun, the following articles were obtained from the car by Agent CHAFFETZ and listed:

1 pr. pigskin gloves
1 pr. cotton lined leather gloves
1 whiskbroom
1 pkge. containing wash cloths and Listerine
1 Atlas polishing cloth, oilcloth cover
1 leather key holder - East Side Arcade
Bowling & Billiards - 350 Atwood Ave.,
Madison, Wis.
1 - ignition key
1 - door or tire lock key
1 - Master padlock key
6 Bill of Sale blanks Form #24, published by Eau Claire
Book & Stationery Co.
1 Set (2) 1935 Georgia license tags #37-216C
1 Tool kit containing:
1 - grease gun (instructions for use.)
1 - lug wrench
2 - hand side wrenches
1 - monkey wrench
1 - screw driver
1 - pr. pliers
1 - tire tool
1 pr. pliers
1 screw driver
1 roll copper antenna wire
1 master padlock #991 (Master Lock Co., Milwaukee)
1 playground ball (cowhide)
1 flashlight - USA Lite - Defender (nickel plate)
1 Atlas polishing cloth
Sinclair Road Map - Wisconsin
Sec. of State Road Map - Illinois
Garage repair receipt #661, Kayser Motors, Inc. Ford V8
5/17/35 - G. L. Jordon, 701-717 E. Washington Ave. 1543348
Dalton, Ga. Madison, Wisconsin
License 37-216C Ga.
CI Station Receipt #5803 - Lynch Bros., CI Co., Inc.
4/11/35 E. F. Maynard 422 N. Adams St.,
Rockford, Ill. Peoria, Ill.
1 box matches - ? folders of matches
1 Baseball sports calendar
6 Twin emergency chains
1 Auto hand pump

"1 Crowbar
1 Complete car jack
1 Complete Ford crank

* * * * * * * * * *

"At the Chicago Bureau Office subject DAVIS was searched by Special Agents M. J. CASSIDY and A. H. JOHNSON and the articles taken from him were listed by Special Agent A. H. JOHNSON and are as follows:

1 White gold ring and red stone (Ruby)
1 Black leather belt (Hickok calfskin) containing zipper inside of belt
1 necktie, dark red with small diagonal stripes
1 Shaeffer pen
Memorandum book, first page containing following notes:

15-16 Main
Jack Richards
467951

174
Talmadge St. $3.00
(Balance of pages in memorandum book blank)

1 $100.00 Federal Reserve Note, G00695199A
1 $100.00 Federal Reserve Note, G00752402A
1 $100.00 National Currency, Crocker First National Bank of San Francisco, Cal., E000878A (1741)
1 $10.00 Federal Reserve Note, G38713877A
1 $5.00 National Currency, First Wisconsin National Bank of Milwaukee, Wis., A065150 (64)
1 $1.00 Silver certificate, G49822340B
1 $1.00 Silver certificate, G35090304B
1 $1.00 Silver certificate, H07162740B
10 .10 pennies
1 .05 nickel
9 .90 dimes
$319.05 Total currency

"Slip of paper bearing phone number Mansfield 6136.
Georgia 1935 Certificate of Registration

Motor No.	Model	Year	Name of Machine	Style of Body
18-1643348	V-8	1935	Ford	Coupe

License No. - 37216C, April 24-35
Owner's Name - GENE L. JORDAN, 28 King Street, Dalton, Ga., County Whitfield.

1 Plain identification card
1 Four-leaf clover
1 Card of the Triangle Buffet. On back bears name B. J. WENTKER, June 1, 1935.
1 Card bearing the name The Triangle Buffet, B. J. WENTKER, Prop. corner Geneva and McHenry Streets, Burlington, Wis., Telephone 57.
1 Card bearing name Felly's Restaurants, 927 S. Park St., Hwys. 12 and 14.
2827 Atwood Ave., Hwy. 51
2 Cartridges .380 AP Rem U.M.C.
1 Hamilton Wrist Watch, 17 jewel, movement #4314032, case #0625952, repair mark 8456 (letter R in circle)
1 Tan leather billfold with black edges
1 Tan leather key case with black edges (matches billfold) containing 8 keys.
Left to right the keys bear the following numbers and names:
1-XX
2-no number
3-#62 - Everlasting lock
4-K8584 - Independent Lock Co. - Fitchburg, Mass.
5-No number (pass key)
6-1125-C Independent Lock Co., Fitchburg, Mass.
7-Felton-Yale
8-Key to Life with cross bearing: "I am a Catholic"; also bearing inscription: "Case of accident call a priest."
1 Pocket knife - "Pocketeze" - 2 blades
1 Small pocket flashlight (shape of bullet)

* * * * * * * * *

"This personal property removed from the person of subject DAVIS was turned over to Special Agent in Charge H. E. ANDERSON of the St. Paul Bureau Office at Minneapolis, Minnesota, on June 3, 1935, by Special Agent R. C. SURAN.

"Special Agents CHAFFETZ and SURAN interviewed subject DAVIS and the following signed statement was obtained:

"'1900 Bankers Building
Chicago, Illinois
June 1, 1935

"'I, VOLNEY EVERETT DAVIS, age thirty-three, do make the following statement voluntarily to Special Agents M. CHAFFETZ and R. C. SURAN, Federal Bureau of Investigation, United States Department of Justice.

"'On February 2, 1922 I was sentenced at Tulsa, Oklahoma, to serve life in the Oklahoma State Penitentiary for murder, at which time I was twenty-one years of age. I remained confined in the Oklahoma State Penitentiary until November 3, 1932, at which time I was granted an eight months' leave of absence from the penitentiary by the then Governor of Oklahoma, the Honorable WILLIAM H. MURRAY. After the completion of this eight months' leave of absence an extension was granted by Governor MURRAY of twelve months.

"'Immediately upon my release from the Oklahoma State Penitentiary I went to Leavenworth, Kansas, where I met JACK GLYNN, a private detective. This meeting was at the National Hotel in Leavenworth, and it was here that I met "Doc" BARKER for the first time after my release. I had previously known "Doc" BARKER, he having been convicted of the same crime on which I was sentenced to the Oklahoma State Penitentiary. After meeting "Doc" BARKER, we went to Kansas City, Missouri, and then flew by airplane to Omaha, Nebraska, where we took a train to St. Paul, Minnesota, and went to the apartment of FREDDIE BARKER, somewhere on Cleveland Street. FREDDIE BARKER, the brother of "Doc" BARKER, was living at this address with his mother who was known to me as "Mother" BARKER.

"'I stayed in St. Paul, Minnesota, one day and one night, at which time I met BILL WEAVER, whom I had previously met at the Oklahoma State Penitentiary where he was a prisoner. I also met RAY KARPIS, VERNE MILLER, JESS DOYLE, and an individual known as "Jew" OTTO.

"'After staying in St. Paul, BILL WEAVER drove me to Chicago, Illinois. At this same time a man I knew as COLEMAN drove Mother

'BARKER and JEW OTTO's woman to Chicago. Mother BARKER rented an apartment located at Kedzie Avenue and Jackson Boulevard, Chicago, and I stayed with her until about December, 1933, when FREDDIE BARKER sent his mother by train to Reno, Nevada. "Doc" BARKER, JEW OTTO, and I then drove to Reno, Nevada.

"'Me and Mother BARKER took an apartment in Reno, Nevada, where we lived for about four months. During this time ALVIN KARPIS, JESS DOYLE, HARRY HULL and two persons known to me as EARLE and HELEN, also were in Reno, Nevada. "Doc" BARKER and JEW OTTO did not remain long in Reno. I have not seen JEW OTTO since this time but understand that he is now serving a sentence in Sing Sing. At the time he was in Reno he was an escapee from this prison in New York.

"'DOC later returned to Reno and about April, 1933, I went to Kansas City, Missouri, with "Doc" BARKER, EARLE and HELEN. After I returned to Kansas City, Missouri, I met EDNA MURRAY for the first time since my release from the penitentiary. I had known EDNA before my conviction in Tulsa, Oklahoma. I met EDNA upon my return to Kansas City, Missouri, in an apartment house located in the vicinity of 43rd and Main Street, where she was living with her sister, DORIS STUCHLICK. Me and EDNA lived in this apartment about a month, then she and myself came to Maywood, Illinois, where she and me began living at 219 North Second Avenue.

"' Mother BARKER at this time was living on Home Avenue in Oak Park, Illinois. FREDDIE and "Doc" BARKER were also living at this address. Later in the summer of 1933, I was living at Long Lake, Illinois, with EDNA in a rented cottage which was rented from a Mrs. PERKINS by FREDDIE BARKER. Mrs. PERKINS runs a grocery store at Long Lake, Illinois. Also living at this place was PAULA HARMON, FREDDIE BARKER and "Doc" BARKER. However, FREDDIE and "Doc" were gone most of the time.

"'It was while I was living at this lake that I first met a man known as MONTY. I have been shown a photograph of BYRON BOLTON and say that this is a likeness of the person known to me as MONTY.

"'Mother BARKER continued to live on Home Avenue for a part of the summer of 1933, and later moved to the Orlando Hotel in Chicago, Illinois.

"'When me and EDNA came back to Chicago, Illinois, from Long Lake we moved to the Eleanor-Manor Apartments on Cyril Parkway. I do not remember how long we lived here, but after moving from this place we lived in an apartment building located in the close vicinity of the Southmoor Hotel.

"'Some time in the fall of 1938 me and EDNA went back to St. Paul, Minnesota, and stayed there about one month, where we lived on Lyndale Avenue South, street number not recalled, after which we went back to Reno, Nevada. Also at Reno, Nevada, at this time were HARRY CAMPBELL, FREDDIE BARKER, "Doc" BARKER, RAY KARPIS, PAULA HARMON, WYNONA BURDETTE, DOLORES DELANEY. I lived with EDNA at the Ridgeway Apartments under the name of J. E. HANSON.

"'Shortly after Thanksgiving, 1933, I returned to St. Paul, Minnesota, with EDNA. HARRY CAMPBELL and WYNONA BURDETTE also returned to St. Paul and began living at the Capitol Apartments. FREDDIE and PAULA returned to St. Paul and lived in an apartment house on Grand Avenue. EDNA and myself lived in an apartment house at 180 Lexington Avenue. BILL WEAVER and his woman, MYRTLE, were at that time living at 518 or close in that vicinity, on Portland Avenue. JESS DOYLE and DORIS STUCHLICK had been living at the White Front Apartments in St. Paul, but I do not recall whether they were living in St. Paul at that time. RAY KARPIS and his woman, DOLORES, went to Chicago, Illinois from Reno, Nevada, at this time. "Doc" BARKER also returned to Chicago, Illinois; I believe Mother BARKER was living in Chicago at the time we were in Reno.

"' Me and EDNA continued to live at 180 Lexington Avenue, St. Paul, Minnesota, until January 18 or 19, 1934. On one of these dates FREDDIE BARKER and GEORGE ZEIGLER came to the apartment and told me and EDNA to leave as the town was going to be turned upside down over the kidnaping. They did not mention the Bremer Kidnaping, but I knew they referred to that case. This is the first time I had met GEORGE ZEIGLER.

"'I have been shown a photograph of FRED GOETZ and state that this is a likeness of GEORGE ZEIGLER.

"'The morning after the above visit of FRED and GEORGE, GEORGE came to the apartment and left with EDNA MURRAY for Chicago, Illinois, driving my Ford coupe. That afternoon I left St. Paul, Minnesota, by a Greyhound bus by way of Eau Claire, Wisconsin. After my arrival

'in Chicago I went directly to an apartment at 6212 University Avenue. EDNA MURRAY, PAULA HARMON and WYNONA BURDETTE were at this apartment when I got there. WILLIE HARRISON had got recommendations for this apartment from some bartender who worked in a tavern in that neighborhood, but the apartment was rented by EDNA MURRAY under the name of E. J. SNYDER.

"'I first met WILLIE HARRISON in August or September of 1933 at the time he was running a saloon in Calumet City, Illinois.

"'I lived at this apartment with EDNA for about three weeks and during this time HARRY CAMPBELL, BILL WEAVER, FREDDIE BARKER and WILLIE HARRISON visited this apartment. These persons would usually come and stay for the night, but I do not recall how many nights these parties stayed here. Just before me and EDNA left the apartment EDNA and WYNONA had a quarrel with PAULA HARMON, and EDNA stated she would not live with PAULA any longer.

"'EDNA and me then went to Aurora, Illinois, where we had an apartment in the Bergyl Apartments, 315 Fox Street. Before I moved to Aurora, Illinois, FREDDIE BARKER gave me $200.00 and told me to go over to GEORGE's apartment in Berwyn, Illinois, off of 22nd Avenue, I do not recall the name of the street, where ZIEGLER was living under the name of JOHNSON. FREDDIE told me that I could get my Ford coupe at this place. I went to this place and got the keys from GEORGE for the car. I then used this car to move to Aurora, Illinois. MONTY was also staying with GEORGE at this apartment in Berwyn, Illinois. The $200.00 which FREDDIE BARKER gave me was in small bills, which may have been $5.00, $10.00 or $20.00 bills.

"'About a week after I moved to Aurora, "Doc" BARKER visited me one night and we went out and had a few drinks, and "Doc" returned to Chicago. About two or three weeks after I went to Aurora FREDDIE BARKER came down and gave me $1,500.00, which amount was in three $500.00 bills. About this time BILL WEAVER and his woman MYRTLE took a room at the Bergyl Apartments where they lived for about a week, and they they took an apartment about four blocks from there, and the address of which I do not recall, but do know that the building was owned by the same people who run the Bergyl Apartments.

"'I do not recall the date, but the day after GEORGE ZEIGLER was killed in Chicago, Illinois, which was some time in March, 1934, Mother BARKER and ZEIGLER's woman, IRENE, came to my place in Aurora,

Illinois, driving a Buick coupe. This was about 11 o'clock at night. On this occasion I had been out riding with EDNA, COPEY BALES and his woman, VIOLET, and MYRTLE EATON, and as we came up the front of the apartment house I observed this new Buick coupe. I left the other people in the car and I went up to the porch, and a woman came down the steps and addressed me as "VOLNEY." I did not know this woman but learned from Mother BARKER later, who was with this woman, that this was IRENE ZEIGLER, the wife of GEORGE ZEIGLER. Mother BARKER told me that she wanted me to go with them; that GEORGE ZEIGLER had some stuff which belonged to the BARKER boys and she wanted to go to Wilmington, Illinois, and get it. I then rode along with them to Wilmington, Illinois. After we arrived in Wilmington, Illinois, IRENE got out of the car in the town and I drove the car within about a block of the house, which I understood was the home of IRENE's uncle. IRENE had told me to wait outside until she went into the house, and if I saw the lights turned on I would know everything was all right. After I went into IRENE's uncle's house she directed me to go with her uncle, whose name I did not know, but I heard IRENE address him as "Uncle Si." Uncle SI and myself then went to the garage. After we entered the garage the only light in there was an extension cord light, and IRENE's uncle went over to the side of the garage and dug away some of the dirt floor and then took a sledge hammer and crushed what appeared to be a cement box. He took out about a two-gallon size lard can and a cardboard box about fourteen inches square tied with heavy cord. He carried one of these packages into the house and I carried the other to the house, where IRENE was waiting for us. I then took both of the packages which had been taken from the garage and took them to the car and placed them in the rear end. I did not know what was in these packages but figured there must have been something valuable in them because of the way they had been concealed. Mother BARKER, IRENE and myself then returned to Aurora, Illinois, where they let me out, IRENE and Mother BARKER driving away in the Buick coupe.

"The next morning IRENE returned to Aurora, Illinois, in the Buick coupe and told me that FREDDIE had gone "crazy", and that I should come to Chicago and help take care of him. IRENE and I then returned to Chicago in my Buick sedan, where I let IRENE out in the vicinity of 63rd and Cottage Grove Avenue. I then drove to FREDDIE BARKER's apartment located somewhere in the vicinity of 78th Street and South Shore Drive. When I got to FREDDIE BARKER's apartment he was asleep

"and I found JIMMIE WILSON and a male nurse there.

"'FREDDIE BARKER was asleep. I saw FREDDIE BARKER's fingers, most of which were bandaged up, but some were not and I saw that they were mutilated and black in color. I then knew that someone had been cutting or burning his fingertips. Mother BARKER was the only other person in the apartment at this time in addition to those I have already mentioned. I only remained in the apartment for about fifteen minutes, and then I returned to Aurora, Illinois, but again visited FREDDIE's apartment the following day when I saw "Doc" BARKER there.

"'At the time MOTHER BARKER came to Aurora and asked me to go to Wilmington with her, she told me that FREDDIE BARKER was at the Irving Park Hotel where he had had his fingers worked on, and as soon as he heard of the death of GEORGE ZEIGLER he got out of bed and took a cab home. She told me that FREDDIE had asked her to get in touch with me and to go to Wilmington and get his stuff which GEORGE ZEIGLER had.

"'Shortly after my second visit to FREDDIE BARKER's apartment I drove with "Doc" BARKER to a rooming house on Winthrop Avenue in Chicago, Illinois, and understood that this rooming house was operated by the sister of OLLIE BERG.

"'I have been shown a photograph of OLIVER A. BERG and state that this is the OLLIE BERG mentioned above.

"'I went to this rooming house with "Doc" to an upstairs room where I saw ALVIN KARPIS and FREDDIE BARKER with their hands bandaged. RAY KARPIS' face was also bandaged. The male nurse whom I had seen before in FREDDIE BARKER's apartment, was also present. FREDDIE BARKER had been moved from his apartment on the south side to this room.

"'I went back to this rooming house at a later time with "Doc" BARKER, "Doc" stating that he had a friend there whom he wanted me to meet. I met OLLIE BERG for the second time on this trip to the rooming house. It was at this time that I met SLIM GIBSON, who was in the house with OLLIE BERG.

"'I have been shown a photograph of RUSSELL GIBSON and state that this is a likeness of the SLIM GIBSON mentioned above.

"'We had a few drinks together but no discussion was had concerning the Bremer Kidnaping or about the ransom money, but "Doc" BARKER made arrangements for SLIM GIBSON to come with OLLIE BERG to BILL WEAVER's apartment in Aurora, Illinois, on the following day. "Doc" told SLIM that he would meet them there. I met JIMMIE WILSON for the second time on one occasion when he and "Doc" BARKER were driving around in Aurora and "Doc" brought JIMMIE to my apartment. I did not see OLLIE BERG and SLIM GIBSON at BILL WEAVER's apartment the following day, neither did I see JIMMIE WILSON there.

"'I do recall seeing HARRY CAMPBELL at BILL WEAVER's apartment on several occasions when I resided in Aurora, Illinois. On one occasion HARRY CAMPBELL told me that he had been "dog bitten" and that JIMMIE WILSON was giving him shots for the prevention of rabies, and on one occasion I was present when JIMMIE WILSON came down to Aurora with SLIM GIBSON and JIMMIE gave HARRY CAMPBELL a "shot" of medicine.

"'During the time I lived in Aurora I met and associated with MAT KERSCH, COREY BALES, TED SMITH, PETE DE KING and MAT GLEASON, and so far as I know none of these men knew my true identity while I was associating with them.

"'On one occasion when WILLIE HARRISON was at BILL WEAVER's apartment in Aurora, Illinois, BILL WEAVER, "Doc" BARKER and HARRY CAMPBELL each gave him, WILLIE HARRISON, $100.00, and I gave him $25.00. WILLIE was broke and needed some money.

"'The night I met SLIM GIBSON at OLLIE BERG's place I discussed with SLIM and OLLIE about having Doctor JOSEPH P. MORAN work on my finger tips with the idea of removing my fingerprints, and OLLIE suggested that I go see Doctor MORAN. Some time during the next day or two me and "Doc" BARKER went to Doctor MORAN's office on Irving Park Boulevard and talked the matter over with him. "Doc" BARKER and me talked with Doctor MORAN about having our fingersoperated on in Toledo, Ohio, and Doctor MORAN stated that if we had a place in Toledo it would be all right, and that he would go there. "Doc" BARKER then said that we could use the house of GEORGE CAMPBELL, meaning HARRY CAMPBELL.

"'About June, 1934, "Doc" BARKER, HARRY CAMPBELL and myself drove to Toledo, Ohio and went to the house CAMPBELL had rented at Point Place. WYNONA BURDETTE was then living in this house and had not been in Aurora, Illinois, with HARRY CAMPBELL.

"'HARRY CAMPBELL, "Doc" BARKER and myself began living in this house and several days after our arrival I met Doc MORAN, SLIM GIBSON, and JIMMIE WILSON and OLLIE BERG at the Casino Club in Toledo, Ohio, which club is operated by BERT and TED ANGUS. A few days later Doc MORAN and JIMMIE WILSON came out to CAMPBELL's house and Doc MORAN operated on me first, cutting my fingertips to remove the fingerprint patterns on my fingers. He also operated on my nose and ears in an effort to change my facial appearance. He then operated on "Doc" BARKER for the same purpose, and three or four days later operated on HARRY CAMPBELL. JIMMIE WILSON acted as a nurse and took care of us.

"'While we were recovering from these operations EDNA MURRAY came to Toledo. EDNA and me then took an apartment on a street, the name of which I cannot recall. JIMMIE WILSON rented this apartment for us. We lived in this apartment for one month and then we moved up on the lake at Sandusky, Ohio, where he had a cottage. As I now remember I rented a cottage on the lake at Sandusky, Ohio, for the months of August and September, 1934, and lived in this cottage with EDNA under the name of E. J. POWELL until the latter part of August, 1934, leaving before the rental had expired.

"'BILL WEAVER and MYRTLE EATON had a cottage at Sandusky as did HARRY CAMPBELL and WYNONA BURDETTE. ALVIN KARPIS, FREDDIE BARKER, "Doc" BARKER, SLIM GIBSON, HARRY SAWYER and GLADYS SAWYER visited us while we were at this cottage. Up until this time FREDDIE BARKER had given me approximately $2,000.00 in cash subsequent to the time that I left St. Paul in January, 1934. Just before I left Sandusky, Ohio, the latter part of August, he gave me $3,000.00 more and enough money in addition to buy a new Ford car. FREDDIE told me that this money was in payment for the use of my car at the time it was borrowed by ZEIGLER in January, and was further in payment of my services for taking care of the women. He did not state that this was my share of any of the Bremer ransom money, but I figured that the money came from that source.

"'Shortly before he paid me this money FREDDIE and I had a disagreement and I decided to leave the gang, and after I received the money me and EDNA left Sandusky, Ohio. I had an old Buick car which I took to Cleveland, Ohio, and which I traded for a Chevrolet panel truck which I drove from Cleveland, Ohio to Cardin, Oklahoma, where I picked up PRESTON PADEN, the son of EDNA MURRAY, and

drove with him to Glasgow, Montana, where COREY BALES and I were going to put up a tavern. EDNA MURRAY left Sandusky, Ohio in the new Ford car which I had purchased at the Ellis Motor Company in Toledo under the name of E. J. POWELL, and drove to Aurora, Illinois, where she picked up VIOLET GREGG, the woman of COREY BALES, and drove with her to Glasgow, Montana, where we again met.

"'Upon my return to St. Paul, Minnesota, after my first trip to Reno, Nevada, subsequent to my release from prison, and prior to the time I went to Kansas City in April of 1933, I met HARRY SAWYER for the first time in a saloon on Wabasha Street, and I may have met his wife, GLADYS, at this time, and visited his place during our stay there quite often. I also visited HARRY SAWYER's place on Wabasha Street in St. Paul, Minnesota, around December, 1933, or January, 1934. At any rate it was during the time that HARRY CAMPBELL was living at the Capitol Apartments in St. Paul. HARRY CAMPBELL and myself went into HARRY SAWYER's place and SAWYER told us that we had better stay away from there as some policeman had been hanging around his place.

"'I further want to state that the time I went to Berwyn, Illinois, and got my Ford coupe from GEORGE ZEIGLER, that this was the first time I had seen this car since it was turned over to GEORGE ZEIGLER in St. Paul, Minnesota, in January, 1934, and which was the car he and EDNA MURRAY drove from St. Paul, Minnesota, to Chicago, Illinois, in January, 1934. At the time FREDDIE BARKER told me where I could find the car, he also told me to get rid of it as there was a lot of heat on it. After getting the car I turned it over to WILLIE HARRISON and WILLIE HARRISON sold it for me in Calumet City, Illinois.

"'I have been shown the photographs of FRED BARKER, ALVIN KARPIS, ARTHUR R. BARKER, HARRY CAMPBELL, HARRY SAWYER, WILLIAM WEAVER, and WILLIAM J. HARRISON, and state that these are the likenesses of the individuals referred to in this statement as FREDDIE BARKER, RAY KARPIS, "Doc" BARKER, HARRY or GEORGE CAMPBELL, HARRY SAWYER, BILL WEAVER, and WILLIE HARRISON.

"'I have read this statement typewritten on ten pages, of which this is the tenth, and have affixed my signature to each page thereof.

"'This is a true statement to the best of my knowledge and recollection.

'(Signed) VOLNEY EVERETT DAVIS

"'Witnesses:

R. C. SURAN, Special Agent
Federal Bureau of Investigation, U.S. Department of Justice
Chicago, Illinois

M. CHAFFETZ, Special Agent,
Federal Bureau of Investigation, U.S. Department of Justice
Chicago, Illinois '

"In addition to that set out above, subject DAVIS was questioned concerning the present whereabouts of other fugitive members of this gang. He denied that he had seen these individuals since August of 1934 when he left them at Sandusky, Ohio, as related in his written statement. DAVIS stated, however, that the last time he saw ALVIN KARPIS, KARPIS had prominent scars on his face, extending downward below the ears as a result of an operation by Dr. JOSEPH P. MORAN. He stated that the scars on the face of KARPIS were much more visible that those on the face of "Doc" BARKER. DAVIS further advised that the ears of KARPIS originally were without lobes and that a portion of the flesh was cut on the lower part of the ear, forming lobes. DAVIS advised that no doubt the scars will show underneath the lobes. He further stated that ALVIN KARPIS is lefthanded and does everything lefthanded, with the exception of writing, of which he is not sure. He furnished further information that an attempt was made by Dr. MORAN to lift one of the eyebrows of ALVIN KARPIS and in so doing he cut the flesh on the hair line of KARPIS' head and as a result of this cut a scar is now visible under the hair line. DAVIS stated that he did not recall over which eyebrow this scar appears. He stated that during the time the cuts on KARPIS' face were healing there was a slight change in his facial appearance, but after the threads were removed no visible change in his facial appearance could be noticed, with the exception of the scars which resulted therefrom. He also stated that KARPIS has a very distinct stoop in his shoulders.

"DAVIS was questioned concerning any individuals whom KARPIS might contact, and he advised that he had heard KARPIS talk considerably of EDDIE DONOVAN and WILLIE HEENEY, but that he, DAVIS, did not know these individuals.

"In connection with WILLIE HARRISON, DAVIS stated that HARRISON has reddish brown hair with considerable gray in it. It will be noted in the description appearing on Identification Order No. 1239 that HARRISON's hair is given as light brown. DAVIS further stated that

WILLIE HARRISON has a very ruddy complexion and that the photograph appearing on the Identification Order for HARRISON is a good likeness of him, with the exception that HARRISON is seldom seen without a smile; that he is at all times very jovial; that HARRISON wears octagon shaped glasses and is known to be a heavy user of intoxicating liquors. Identical information concerning WILLIE HARRISON has also been furnished the Chicago Bureau Office by CLARA GIBSON.

"A photograph of JOHN RUSSELL MORAN was exhibited to DAVIS and he stated that that was an individual known to him as "Blackie" MORAN. He stated that shortly after he met WILLIAM HARRISON, in the summer of 1933, he advised HARRISON of the fact that he was going to St. Louis, Missouri, and HARRISON told him to look up "Blackie" MORAN, who operated a joint in East St. Louis, Illinois; that MORAN was a very good friend of his and an alright fellow. DAVIS stated that he went to St. Louis and found the joint referred to by HARRISON, but the address he does not now recall, and that he, DAVIS, inquiried at this place for "Blackie" MORAN and learned that he was in jail in connection with some murder charge and for that reason he, DAVIS, did not contact MORAN.

"Concerning CHARLES FITZGERALD, DAVIS stated that FITZGERALD, who was known to him as "CHUCK" appeared to be over 70 years of age; that he is considerably bald, and further that he wears a brace on his left leg continuously and also wears a built-up shoe to the extent of about four inches on his left foot. The information concerning this additional descriptive data on the subjects, as related above, has been furnished the Bureau and all Bureau offices by letter.

"DAVIS further stated that just prior to the apprehension of subject "Doc" BARKER, he met BARKER with SLIM GIBSON at Kahn's Grove, Elmhurst, Illinois, which would be in November or December, 1934 (DAVIS not sure), at which time he inquired of "Doc" BARKER where "CHUCK" could be located, meaning CHARLES J. FITZGERALD, as he, DAVIS, owed "CHUCK" $400 and desired to pay it; that "Doc" BARKER replied that that was one debt which he, DAVIS would never have to pay as old"FITZ" had died some time prior to this meeting. DAVIS was unable to state just what time this death took place, but stated that he believes that "CHUCK" died in California probably in a hospital at Vallejo, California, probably as the resultof an operation on his leg. This information appears to be inconsistent with previous information obtained by the Bureau, in that previous information indicates that CHARLES J. FITZGERALD was in Toledo, Ohio in January, 1935, and it

"Will further be noted in the report of Special Agent C. D. WHITE, Los Angeles, California, dated April 20, 1935, that on February 7, 1935 FITZGERALD was identified as an individual who sold Buick club sedan, Motor No. 2875177, to GEORGE MC PHEETER at Long Beach, California. However, the San Francisco office, under date of June 4, 1935, was requested to conduct further investigation at Vallejo, California.

"DAVIS also stated that WILLIAM WEAVER, during the time he was associated with him prior to August, 1934, discussed the possibility of securing a large tract of land in Canada where he could spend his time hunting and fishing, of which sports he, WEAVER, was very fond. DAVIS further stated that he knows of no specific place in Canada where WEAVER intended to purchase a farm, but stated that WEAVER advised that he intended to purchase a farm in Canada as soon as he secured sufficient funds. He stated that it was WEAVER's idea to purchase a wooded tract of land consisting of somewhere in the vicinity of 100 acres, if possible.

"Under date of June 3, 1935 this information was furnished to the Cleveland Office by letter inasmuch as under date of May 31, 1935, the Bureau authorized an Agent of the Cleveland office to conduct an investigation concerning similar information at Marmora, Ontario, Canada.

"Following subject DAVIS' escape at Yorkville, Illinois on February 6, 1935, subject DAVIS stated that he stole a Ford car, which he immediately drove to Aurora, Illinois. Upon arriving in that city he contacted TED SMITH, a tavern keeper there, of whom he requested money and a gun. TED SMITH gave him fifty cents, stating that was all the money he had at that time, that he could spare, and that he could not furnish him, DAVIS, with a gun because the Government had taken the gun which he had had in his possession. DAVIS then proceeded to the tavern owned and operated by MATT KERSCH, but was informed at this place that KERSCH was not around. DAVIS then went to the home of MATTHEW GLEASON, where he contacted GLEASON and requested that he, GLEASON, loan him some money. He was informed by GLEASON that he did not have money he could loan him, and DAVIS then asked GLEASON whether he could raise any money for him on his diamond ring. DAVIS gave the ring to GLEASON, informing him that he wanted to get about $15.00 or $20.00. GLEASON took the ring, and DAVIS immediately left and drove the car which he had stolen to Wheaton, Illinois where he abandoned it. He then hitch-hiked into Chicago where he spent the night in a flophouse on Madison Street, the exact

"address of which he did not recall. The following morning he stated he returned to Aurora on the electric railway and again proceeded to the home of MATTHEW GLEASON, in order to get the money coming to him from GLEASON for the ring. GLEASON was not home at the time so DAVIS remained there the entire day. That evening, becoming suspicious of the fact that GLEASON had not as yet returned, and noticing that there were numerous cars in the vicinity, he borrowed $5.00 from one of the boarders at the GLEASON home, slipped out of thehouse and boarded a bus to Kansas City. He stated that the night of his escape he wrote a special delivery letter to the Beaumont Apartments, Kansas City, advising the manager there that he would call forhis clothes in the near future.

"DAVIS was questioned concerning the source of the $319.05 which he had in his possession at the time of his apprehension, and he stated that at the time of his apprehension in Kansas City, in February, and his subsequent escape in Yorkville, Illinois, he had $600.00 sewed in his clothes which the Agents of the Bureau did not find. He was then questioned as to why he tried to sell his diamond ring in Aurora, Illinois when he had $600.00 on his person. He stated that the money which he had on his person in Yorkville consisted of six $100.00 bills and that he was afraid to attempt to have one of them broken for smaller currency. When questioned as to where he went in Kansas City, DAVIS stated that he contacted a bartender there whom he had met previously and that he also contacted a girl friend of his, the names of which individuals he would not reveal. He was then questioned as to whether he had been in St. George, Utah in February, 1935 and DAVIS remarked, "Oh, I see you heard of my letter which was mailed from St. George." DAVIS further stated that the girl friend whom he visited in Kansas City had a girl friend who lived in St. George, Utah and that this woman was returning to Utah shortly after he, DAVIS, returned to Kansas City, and he requested this woman to mail the letter for him to the manager of the Beaumont Apartments in Kansas City. DAVIS stated that after leaving Kansas City he proceeded to Rockford, Illinois. This was about April, 1935 and he rented an apartment at the Palm Apartments, located on Palm Street in that city. He stated that during his residence in Rockford, Illinois in April, 1935 he came to Bensonville, Illinois and communicated by telephone with JIM FARMER, the brother of subject ELMER FARMER in this case, and requested JIM FARMER to get in touch with TONY MARENO and advise MARENO that he wanted a car. He stated that MARENO met him shortly thereafter on a highway near Bensonville and turned over to him the Ford car which was in his possession at the time of his apprehension. He stated that he paid MARENO $125.00 for the car and that he was confident that the car had been stolen as he knew MARENO was an automobile thief and that the car had just a few miles over 2,000 on it at the time of the purchase of the car by him. He stated that he secured this car from MARENO and shortly thereafter

license plates were received at the Palm Apartments at Rockford, Illinois, addressed to Mr. E. F. MAYNARD. These license plates were 1935 plates and number 101-295; that he stole these plates and put them on the car and shortly thereafter he and MARENO drove the car to Dalton, Georgia where MARENO registered it for him under the name of GENE L. JORDON, 28 King Street, Delton, Georgia. DAVIS stated that he and MARENO observed this address as they were entering Dalton, Georgia and used it for the purpose of securing the plates. DAVIS claimed that he knew no one residing at 28 King Street, Dalton, Georgia. He stated that after returning from Georgia he returned to Rockford, Illinois and, as he believes, about the latter part of April, made a visit to the home of his parents, Mr. and Mrs. RODNEY E, DAVIS, Neosho, Missouri, where he saw both his father and mother, neither of whom would permit him to stay there because they feared that they would subsequently be punished for harboring him. He stated that he remained at his home for only about fifteen minutes during which time his father advised him not to resist arrest in the event an attempt was made to capture him, and that if he were captured alive to do the right thing and perhaps he, DAVIS, would get another opportunity to "go straight." DAVIS stated that thereafter he returned to the vicinity of Chicago, Illinois and spent considerable time just driving around Wisconsin.

"DAVIS stated that about a week or ten days prior to his capture he had been with the Sols-Liberty Carnival, which was then located at Madison, Wisconsin; that he was living with a woman known to him only as "PATSY." He stated that this woman was not directly connected with the carnival, but went along with it being more or less of a "hustler" and that he, DAVIS, was planning to take a gambling concession with this carnival.

"Subject DAVIS was also questioned concerning his knowledge of the Weyerhaeuser kidnaping, but he denied that he had any information concerning it. He stated that on June 1, 1935 he was driving around and happened to be in Burlington, Wisconsin en route to Chicago, Illinois to visit [redacted] that he observed a newspaper indicating that he was being sought in connection with the Weyerhaeuser kidnaping; that he entered the Triangle Buffet, Burlington, Wisconsin, and had a few drinks with the bartender; that he picked up a card bearing the name of the Triangle Buffet and requested the bartender to write his name on the back of it, and also the date, and specifically requested the bartender to remember him. He stated that this was the card which was found on his person bearing the name of B. J. WENTKER.

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"On the afternoon of June 2, 1935 Special Agent M. CHAFFETZ further

"questioned subject DAVIS concerning his connection with the instant case, at which time DAVIS stated that he knew that the boys, referring to the BARKER-KARPIS Gang, had 'pulled the Bremer kidnaping job and that I am guilty because I aided and abetted them in pulling that job by renting apartments for them, taking care of their women, and lending them my car._

"DAVIS was further questioned concerning the Hamm kidnaping, and he stated that during the time he was living at Long Lake, Illinois during the summer of 1933, FRED BARKER, "Doc" BARKER, and ALVIN KARPIS were at the lake and divided a large sum of money, which he presumed was Hamm kidnaping money and after these three made an even split of the money they advised that there was $750.00 extra, which amount FRED BARKER gave to him, DAVIS. He denies that he was a participant in the Hamm kidnaping.

"Due to the limited time that DAVIS was held in custody by the Chicago office complete statements concerning all of his activities were not secured and the Bureau has requested a complete investigation as to his places of abode subsequent to his escape at Yorkville, Illinois on February 6, 1935 with the view of placing harboring charges against various individuals who assisted him. The St. Paul Bureau office has been requested by this office to obtain a complete statement from DAVIS in this regard and furnish the information to all interested offices.

"Concerning the Ford coupe which was recovered from DAVIS at the time of his arrest, an examination by Special Agent M. CHAFFETZ determined that the Motor No. 18-1643348 appearing on this car was fictitious. On June 3, 1935 this automobile was examined by WILLIAM J. DAVIS, Special Agent of the Automobile Protective and Information Bureau, Chicago, Illinois, and Special Agent R. C. SURAN at the Clark-Van Buren Garage, at which time the secret number was determined to be 1618818, which is the correct motor number for this car. Mr. DAVIS checked the records of his office and determined that this car was the property of the Dixon-Friedman, Inc., 124 South Washington Street, Peoria, Illinois, wholesale liquor dealers, and was stolen from the owner on March 26, 1935 at Peoria, Illinois. The car is insured at the Springfield Fire and Insurance Company, and valued at $625.00.

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"It is believed that the TONY MARENO, who, according to DAVIS, sold this car to him, is identical with the individual who has been referred to [redacted] and through who[redacted] is endeavoring to secure information concerning the whereabouts of other fugitive members of this gang, and especially WILLIE HARRISON, and therefore

"it is considered inadvisable to interview MARENO at this time in connection with this car. However, this will be done at a later date and appropriate investigation will be conducted concerning MARENO's violation of the National Motor Vehicle Theft Act in transporting this car from Rockford, Illinois to Atlanta, Georgia.

"Subject DAVIS signed a waiver of removal on June 1, 1935 and on the afternoon of June 2, 1935 subject DAVIS was taken by airplane by Agents M. J. CASSIDY, E. E. KUHNEL, E. H. WILLIAMS, H. W. STEWART, F. M. HEADLEY, and R. C. SURAN from Chicago. However, due to weather conditions a six and one-half hours delay was had at Madison, Wisconsin and subject DAVIS did not arrive at Minneapolis, Minnesota until 5:15 A.M. on June 3, 1935, at which place he was turned over to Special Agent in Charge H. E. ANDERSON and other Agents of the St. Paul Bureau Office."

It should be noted that the above signed statement and signed waiver of removal are a part of the Minneapolis file in this case.

The files of the United States Attorney at St. Paul, Minnesota, contain the following memorandum concerning local newspaper publicity relative to VOLNEY DAVIS:

"The ST. PAUL DISPATCH of June 3, 1935, carried a long article about the plea of VOLNEY DAVIS and among other things related that he was brought into the Court Room handcuffed to a Deputy Marshal and then said, 'The thirty-three year old prisoner appeared nervous and often rubbed his face with his free hand in which he held a grey hat as the Clerk droned the long charge (the article previously said that the seventeen page conspiracy indictment was read to him).'

"'You are here for the purpose of pleading guilty or not guilty to the charge,' Judge JOYCE told DAVIS. 'What is your plea?' 'Guilty', whispered DAVIS in a voice so low that Court attaches had to strain to hear.

"'Do you understand the charge and the penalty?' Judge JOYCE asked. 'I understand the maximum penalty is life,' DAVIS replied. 'That is right,' the Court said.

"The ST. PAUL PIONEER PRESS for June 4, 1935, carried another article about DAVIS saying that he had entered his plea the day before to the indictment and that he said he was glad it was over with--that when they read the indictment to him he knew that he couldn't beat the

"G-Men and that they knew as much about the kidnap story as he did and that the indictment in fact set forth the story just as it happened. He also said something about he hoped to get the book and have it over with.

"From the newspaper morgue of the ST. PAUL PIONEER PRESS & DISPATCH, it was noted that in the June 3, 1935 DISPATCH, in the news article dealing with the Bremer Kidnaping case that the Court is quoted as having said to VOLNEY DAVIS at the time of arraignment on June 3rd, 'You realize why you are here -- and what the penalty is?' to which DAVIS is reported to have replied, 'I understand the maximum penalty is life.'

"In the ST. PAUL DAILY NEWS on June 3rd the news article dealing with this matter reflects that the Court asked VOLNEY DAVIS after the indictment had been read to him, 'Do you understand the indictment?' to which VOLNEY DAVIS replied 'Yes,' and made no other comment.

"In none of the issues of the PRESS, DISPATCH, and NEWS covering the period from June 3rd to June 8th inclusive was there any comment relative to counsel or any inquiry between DAVIS and the Court or others relative to the securing of counsel for the defendant.

"The employees of the PRESS and DISPATCH were unable to locate the assignment book which would include the assignment of a specific reporter to the trial. The reporter ROBERT THOMPSON stated that it was his recollection that he did cover the arraignment and the sentencing of VOLNEY DAVIS but that inasmuch as he is unable to locate the assignment he is not positive. He said also that it is his recollection that some statement was made by the Court to DAVIS concerning counsel or whether he wished counsel. THOMPSON is certain that he was in attendance at the arraignment and sentencing but as before stated is not positive that he wrote up the news item."

WILLOUGHBY M. BABCOCK, curator of newspapers, Minnesota Historical Society, St. Paul, Minnesota, furnished the writer with a certified photo reflex copy of an article entitled, "I Can't Win," which appeared on page 1, column 7, of the "St. Paul Daily News" for June 3, 1935, and which reads as follows:

"Gangman, In Own Story, Explains Plea

"By VOLNEY DAVIS
"(As told to a Daily News Reporter)

"I pleaded guilty to the conspiracy charge because I knew I couldn't beat 'em (the federal government).

"No I didn't plead guilty merely to get it off my chest. I have been thinking of it for some time, but after reading accounts of the trial in St. Paul last month, at which time several of the so-called gang members were found guilty, I decided that the federal government knew as much about the case as I did and there was no chance of beating it.

"I would like to accommodate you fellows for pictures and as you say, it may not 'hurt me,' but there is someone else the pictures may hurt, and their hurt WOULD hurt me, and I have hurt them enough of late. It would be unfair to them to hurt them anymore.

"You say that EDNA (EDNA MURRAY, Kansas City's 'kissing bandits') was loyal to me to the end when she talked to you. Oh, well—

"Six months ago I decided I couldn't stand the pressure. I really decided to give myself up at that time, but changed my mind. Then came the trial and the newspaper accounts. I read every line of every newspaper I could get my hands on."

The above certified copy is a part of the Minneapolis file and efforts are being made to identify the "Daily News" reporter who wrote this item at St. Paul.

Sheriff THOMAS GIBBONS, Ramsey County, Minnesota, advised that his secretary, Mrs. VIRGINIA SCHWEITZ, had made a copy of a letter written by VOLNEY DAVIS from the Ramsey County Jail, St. Paul, which was dated June 3, 1935, and which reads as follows:

"June 3rd, 1935.

"My dear Mother, Father and Sisters:

"At last I am in a position where I can write to you all again. And I am sure glad that I can for it has been awful to be running around over the country and not being able to write to the only ones in this

"world that really love me. I am here in Jail and have entered a plea of guilty to conspiring in this case. I guess you have read about it in the papers. I will be sentenced on Friday, this week, I don't know what I will get but I expect it will be a life sentence. I guess I will be sent to the Government prison out in California, but before I go there I will be held for thirty days in some prison here. But I won't be here long enough for you to come to see me. But just as soon as I am where you can have time to come to see me I will let you know when and where to come. I have some property and some money I want to turn over to you and if it is so you can I want you to bring RUBY with you as there will be quite a bit of running around and she can do it better than you.

"I would like to see all of you before I go away for good but I may be impossible as it will cost too much. Tell all the kids hello for me and tell the boys to take a lesson from my experience and never touch any thing that don't belong to them. For a man can get more enjoyment out of ten dollars he has earned honestly then he can a thousand he got dishonestly. I know from sad experience. I am telling you this to tell them because it may do some good and I know my life has been spared for some reason in this world and if I can keep some young boys from going wrong I have accomplished some thing in this world. I would give any thing if I could start over again, for I know I could be successful in business if I was free for I have been fairly successful in business transactions while I have been dodging the law and I know if I had of been free to have taken care of them like any other citizen I could have done much better.

"Papa and Mamma I don't want you all to feel too bad about this for after all you will know where I am at night when you go to sleep and I won't be in any danger of being killed any moment. And I promise if such a thing should happen as I am ever a free man again I will make an honest living regardless of how little I can earn. And I will be a model prisoner where ever I go and for what ever length of time I get. I have been treated good here and am well in body. I hope where ever I go that I get work that won't be injurious to my health. Well, I don't know much to write but I will sure write every time I get a chance and try to make up for the last time.

"Tell Uncle NEWT hello and I sure would like to see him.

"I am going to write to BERTHA soon and IRENE. I think I know their address, but in case I don't you tell them you heard from me.

"Be sure to tell me how BEAULAH is and when you saw her last. I sure do hope she gets well.

"Guess MILDRED is O.K. I hope so. Well, I will close. With all my love to you all, as ever

"(signed) VOLNEY DAVIS "

Sheriff GIBBONS stated that his original copy of the VOLNEY DAVIS letter is maintained in the files of his office at the Ramsey County Court House at St. Paul.

The Minneapolis file reflects the following news item which appeared in the St. Paul Dispatch December 8, 1953, and which reads as follows:

"VOLNEY DAVIS, serving his nineteenth year of a life term for his part in the kidnaping of EDWARD G. BREMER, St. Paul banker, is the author of a hardhitting 'crime-does-not-pay' article in the current issue of the Prison Mirror, Stillwater prison newspaper.

"The article reprinted from 'The New Era', inmate publication at Leavenworth federal prison where DAVIS is serving his time, is directed at young men serving short terms 'who talk of pulling one big job that will take care of them for life when they get out of prison.'

"DAVIS, labeled by FBI agents in 1935 as 'the toughest member' of the old Barker-Karpis gang which kidnaped BREMER and collected $200,000 ransom money, ended with these words —'Remember: It takes neither guts nor any other special ability to get into prison.'

"DAVIS and ARTHUR (DOC) BARKER got life sentences in the kidnaping and FREDDIE and 'MA' BARKER were shot to death in Florida while resisting arrest.

"DAVIS wrote that Leavenworth 'is full of old men' who had plans similar to those of the young men to whom he directed his words—one last big job and retirement for life.'

"The article said in part:

"'I am one of these old men. I have followed crime all my life. Over 50 years of age, I have nothing to show for my life.

"'If you have grandiose ideas about getting out of prison and making that one big haul, so that you can sit back

and tak it easy for the rest of your life, forget such ideas. The stories you hear of big money unsolved crime scores are nothing but pipe dreams. Don't be suckers and fall for them.

"'You cannot succeed because you will be pitting yourself against the strength and resources of 160 million people.

"'I made that kind of deal--but did I get to take it easy? Yes, for the past 18 years in Alcatraz and Leavenworth.

"'If you will stop and do some honest thinking, you will realize that a common ditch digger is wealthier than any of us, for he has something which we cannot buy -- simple freedom with peace of mind. Wise up while you are still young or you will probably learn by bitter experience that freedom is all. And the knowledge may come too late to help you.

"'Remember: It really takes neither guts nor any special ability to get into prison.'

"DAVIS, who looked more like a college halfback than a gangster, showed his talents as an author shortly after he had been lodged in Ramsey county jail.

"A letter in which he told his mother she no longer would have to worry as to the whereabouts of her son, was reprinted in several detective magazines."

It is to be noted that the above item makes reference to an article reprinted from "The New Era," an inmate publication at Leavenworth Federal Prison, where DAVIS is presently incarcerated, and a lead is being set out for the Kansas City Office to obtain pertinent copies of "The New Era" for the information of the United States Attorney, St. Paul.

ENCLOSURES TO THE BUREAU:

One typewritten copy of the brief filed in July, 1953, by the Honorable GEORGE E. MAC KINNON, United States Attorney, St. Paul, with the United States District Court of Appeals for the 8th Circuit. This brief was filed for the U.S. Court of Appeals from the U.S. District Court for the District of Minnesota in the case of VOLNEY DAVIS vs. United States of America.

- P -

ADMINISTRATIVE PAGE

The United States Attorney's Office has requested that this investigation be expedited.

LEADS

THE CHICAGO OFFICE

At Chicago, Illinois

Will review the Chicago files for any pertinent information which will assist in refuting charges by VOLNEY DAVIS set forth in his petition for writ of habeas corpus, and attempt to locate any logs or records which will set forth date and time VOLNEY DAVIS was received at the Chicago Office, arrangements for food and refreshments, and date and time DAVIS departed from Chicago to St. Paul, and similar data.

THE KANSAS CITY OFFICE

At Leavenworth Penitentiary, Kansas

Will contact the warden of the U.S. Penitentiary at Leavenworth to determine if any detainers have been filed against VOLNEY DAVIS and whether DAVIS has any other sentences to serve in addition to his life sentence. It is noted that this lead is set out in referenced air-tel to the Director dated February 4, 1954, a copy of which was furnished the Kansas City Office.

Will contact the warden, U.S. Penitentiary, Leavenworth, to obtain two copies of the article written by VOLNEY DAVIS in inmate publication, "The New Era," which article was entitled, "Crime-Does-Not-Pay."

THE MIAMI OFFICE

At Jacksonville, Florida

Will interview HAROLD A. MARTIN, 1790 Penigrove Avenue, Jacksonville, Florida (former agent), who assisted in the apprehension of subject VOLNEY DAVIS at Chicago, Illinois on June 1, 1935, and obtain a signed statement setting forth MARTIN's recollection of the apprehension. MARTIN should also be interviewed whether DAVIS was held in chains, shackled to a cot, pipe or radiator, and not allowed to see anyone. Former Agent MARTIN should be interviewed also concerning the time DAVIS

was arrested, whether or not he made any request to make a telephone call or any request to see a lawyer, and the facts surrounding such circumstances. Mr. MARTIN should also be interviewed concerning any resistance to the arrest on the part of DAVIS. Mr. MARTIN should also be interviewed concerning any promises that VOLNEY DAVIS alleges were made that if he would plead guilty to conspiracy that would result in his being sentenced to less than life imprisonment and for a term of years. Mr. MARTIN should be asked whether VOLNEY DAVIS asked for permission to talk to a lawyer and whether he or anyone else told DAVIS, "We are all lawyers and we will take care of you." Inquiries should also be made of Mr. MARTIN as to whether VOLNEY DAVIS was given food and refreshments and allowed to sleep and given clean clothing to wear, and any other data which Mr. MARTIN may recall which is pertinent to this case. All of the charges made by VOLNEY DAVIS in his petition should be covered in the interview with MARTIN, with the exception of points 2, relative to being taken before a U.S. Commissioner, and 3, was never presented with a copy of the indictment, which Assistant United States Attorney ALEX DIM advised were points he would refute.

At West Palm Beach, Florida

Will locate and interview HARRY W. STEWART, (former agent), Wideman, Wardlaw and Caldwell, 1401-12 Harvey Building, West Palm Beach, Florida. Mr. STEWART will be asked for a signed statement and interviewed along the same lines as the above lead.

THE NEW YORK OFFICE

At New York City, New York

Will locate and interview HAROLD E. ANDERSON (former agent), Association of Casualty and Surety Executives, 60 John Street, New York. Mr. ANDERSON will be asked for a signed statement and interviewed along the same lines as the lead set out for Miami.

Will locate and interview Mr. FRANK M. HEADLEY (former agent), Kelly-Smith Company, Graybar Building, 420 Lexington Avenue, New York, as set out above. A signed statement will be obtained.

THE OMAHA OFFICE

At West Des Moines, Iowa

Will locate and interview EARL H. WILLIAMS (former agent), 720 Fourth Street, West Des Moines, Iowa, as requested in the lead set out for Miami. A signed statement will be obtained.

THE PHILADELPHIA OFFICE

At Philadelphia, Pennsylvania

Will locate and interview MAXWELL CHAFFETZ, Greene Manor, Germantown, Philadelphia 44, Pennsylvania, along the lines indicated in the lead for Miami. A signed statement will be obtained. (former agent)

THE SAN ANTONIO OFFICE

At San Antonio, Texas

SA E. E. KUHNEL will submit a signed statement setting forth his recollection of events which transpired in this case along the lines of the lead set out for the Miami Office. A signed statement will be obtained.

THE SAN DIEGO OFFICE

At San Diego, California

SA R. C. SURAN will submit a signed statement setting forth his recollection of the events which transpired in this case, it being noted that SA SURAN assisted in the apprehension of VOLNEY DAVIS and that SURAN also obtained a signed statement and a signed waiver of removal from VOLNEY DAVIS in Chicago.

THE SAN FRANCISCO OFFICE

At San Francisco, California

SA M. J. CASSIDY will furnish a signed statement setting forth his recollection of events which transpired in this case, it being noted that SA CASSIDY assisted in the apprehension of VOLNEY DAVIS and also assisted in the search of VOLNEY DAVIS at the Chicago Office and also assisted in the transportation of DAVIS from Chicago to St. Paul.

THE SAVANNAH OFFICE

At Florence, South Carolina

Will interview former SAC MELVIN H. PURVIS, 1356 Cherokee Road, Florence, concerning his recollection of events which transpired in this case. It is noted that Mr. PURVIS was in charge of the apprehension of VOLNEY DAVIS in Chicago, and that VOLNEY DAVIS also gave a signed waiver of removal to former SAC MELVIN H. PURVIS. A signed statement will be obtained.

THE ST. LOUIS OFFICE

At St. Louis, Missouri

Will locate and interview JOHN E. BRENNAN, 4410 Dresden, St. Louis, Missouri, concerning his recollection of events which transpired in this case. A signed statement should be obtained and points covered in the interview with Mr. BRENNAN should be along the same line as set forth in the lead for the Miami Division. (former agent)

THE MINNEAPOLIS DIVISION

At Minneapolis, Minnesota

Will interview GEORGE H. HEISEY, referee in bankruptcy, formerly Assistant United States Attorney, concerning his recollection of instant case.

At St. Paul, Minnesota

Will interview and obtain signed statement from the following who furnished affidavits in 1940:

JOSEPH T. LYNCH
WILLIAM C. ECKLEY
JAMES M. KLEES
EDWARD R. PICHA
JOHN DE COURCY
J. B. MACKAY
ROBERT THOMPSON

Will also interview EARL MORRISON, Chief Criminal Deputy, United States Marshal's Office, concerning any record on file in his office concerning VOLNEY DAVIS.

will also interview RONALD HAZEL, Attorney, Bundlie, Kelly, Finley and Maun, Hamm Building, concerning his recollection of instant case, information having been received that Mr. HAZEL was a law clerk for Judge SANDBORN in 1935 and was in attendance at the trial of VOLNEY DAVIS.

Will interview victim EDWARD GEORGE BREMER, President, Commercial State Bank, St. Paul, to ascertain whether he was in court at the arraignment or sentencing of VOLNEY DAVIS and whether he has any recollection of other events and other witnesses in this case.

Will review the newspaper morgue of the "St. Paul Dispatch and Pioneer Press" and Minnesota Historical Society for any additional data pertaining to the instant case and attempt to identify the reporters who submitted articles pertaining to instant case in 1935.

REFERENCES

SAC MILNES' conversation with Supervisor FRANK PRICE at the Bureau, January 26, 1954.
St. Louis air-tel to the Bureau, January 27, 1954.
Minneapolis air-tels to the Bureau dated February 2, 4, and 5, 1954.
Bureau air-tels to Minneapolis dated February 2 and 9, 1954.
Minneapolis letters to the Bureau dated January 6, February 4, and April 6, 1953.
Bureau letter to Minneapolis dated January 16, 1953.
Report of SA R. C. SURAN at Chicago dated June 10, 1935.

No. 14,799 Civil

IN THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

VOLNEY DAVIS, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR

THE DISTRICT OF MINNESOTA

BRIEF FOR THE UNITED STATES

George E. MacKinnon,
United States Attorney.

Alex Dim,
Assistant United States Attorney.

IN THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 14,799 Civil

VOLNEY DAVIS, Appellant.

VS.

UNITED STATES OF AMERICA, Appellee.

On Appeal from the United States District Court for the District of Minnesota, Third Division.

BRIEF FOR THE UNITED STATES

STATEMENT

The Proceedings.

There is no printed record in this appeal. The Clerk of the District Court was by this Court, on May 12, 1953, ordered to submit the original files to this Court for examination. The Appellant was indicted on January 22, 1935. The Indictment charged him and several others, with conspiracy to kidnap one Edward George Bremer in violation of Chapter 271, 47 Stat. 326; 18 U.S.C. 408a. This Section was commonly

known as the Lindbergh Act. Appellant was indicted under the original Act which provided the same punishment for conspiracy to violate the Act as was provided for the substantive crime of kidnaping.

Appellant was arrested on June 1, 1935 in Chicago, Illinois, removed to St. Paul, Minnesota, on June 2, 1935, and arraigned before Honorable Matthew M. Joyce on June 3, 1935.

The records of the Clerk of Court disclose the following Term Minutes of the arraignment on June 3, 1935.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT OF MINNESOTA

THIRD DIVISION

TERM MINUTES — APRIL TERM A.D. 1935 — JUNE 3, 1935.

Monday Morning
Court opened pursuant to adjournment
Present: Honorable MATTHEW M. JOYCE, Judge.

The United States)
)
vs.)
)
Alvin Karpavicz, et al.) No. 6096 Criminal.

The United States Attorney, Geo. F. Sullivan, being present the defendant Volney Davis appears and is arraigned. Upon being questioned by the Court said defendant stated that he did not desire the advice of counsel and entered a plea of guilty to the charge in the indictment herein.

Whereupon, it is by the Court

ORDERED: That sentence be and same hereby is deferred to June 7, 1935.

Prior to the entry of Appellant's plea of guilty to the conspiracy Indictment, he admits that the Clerk of Court read said Indictment in open Court.

On June 3, 1935, there was no Court Reporter making notes of the proceedings. The practice in Federal Court at that time did not require that a Court Reporter be present. If one was desired by any of the parties, they had to arrange for the same and pay for the same.

On June 7, 1935, the records of the Clerk of Court disclosed the following Term Minutes:

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT OF MINNESOTA
THIRD DIVISION

TERM MINUTES APRIL TERM A. D. 1935 June 7, 1935.

Friday Morning
Court opened pursuant to adjournment
Present: Honorable MATTHEW M. JOYCE, Judge.

The United States)
)
vs.) NO. 6096 Criminal.
)
Alvin Carpavicz, et al.)

The United States Attorney, George F. Sullivan, being present, now comes the Defendant Volney Davis with his Attorney, and by reason of the plea of guilty entered herein on the 3rd day of June, 1935, it is by the Court

CONSIDERED, ORDERED AND ADJUDGED: That the defendant Volney Davis is guilty of the crime of unlawfully conspiring, combining, confederating and agreeing with various and divers other persons to transport a kidnaped person in interstate commerce, as charged in the indictment herein; and that as punishment therefor said defendant be committed to the custody of the Attorney General of the United States or his authorized representative, for imprisonment in an institution of the penitentiary type, preferably the U. S. Penitentiary at Leavenworth, Kansas, for the term of his natural life.

Of course, no Court Reporter was present or required at the time of sentencing on June 7, 1935.

On October 10, 1939, Judge Joyce signed an Order amending the Judgment of June 7, 1935, because of a clerical error, which Order reads as follows:

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION
No. 6096 Cr.

United States of America, Plaintiff,	)	
vs.	)	ORDER AMENDING JUDGMENT
Volney Davis, Defendant.	)	

WHEREAS, it has been brought to the attention of the Court that the first paragraph of the judgment and sentence entered by the Clerk of the United States District Court, District of Minnesota, Third Division, in the Term Minutes of said court on the 7th day of June, 1935, in the case entitled United States vs. Alvin Karpavciz, et al., No. 6096 Criminal, Third Division, does not conform to what was actually done in said cause but was so entered by said Clerk by reason of a clerical error, said first paragraph reading as follows:

> "The United States Attorney, George F. Sullivan being present, now comes the defendant, Volney Davis, with his attorney, and by reason of the plea of guilty entered herein on the 3rd day of June, 1935, it is by the Court"

and,

WHEREAS, on said 7th day of June, 1935, said Volney Davis appeared before said court without an attorney for sentence on his plea of guilty entered on the 3rd day of June, 1935, said Volney Davis on said 3rd day of June, 1935, having been specifically asked by the court if he was willing to plead without the assistance of counsel, at which time and place said Volney Davis replied that he was, and the court being fully advised in the premises, it is

CONSIDERED, ORDERED AND ADJUDGED, that said first paragraph of the judgment and sentence entered by the clerk of said court as aforesaid in the Term Minutes of said court on the 7th day of June, 1935, in the cause aforesaid be and the same hereby is amended so as to conform with what was actually done in said cause so as to read as follows:

> "On this 7th day of June, 1935, came the United States Attorney, George F. Sullivan, and the defendant, Volney Davis, appearing in proper person, and having been asked on June 3, 1935, whether he was willing to plead without the assistance of counsel, replied that he was, and by reason of the plea of guilty entered herein on the 3rd day of June, 1935, it is by the Court"

Dated this 10th day of October, 1939.

MATTHEW M. JOYCE
United States District Judge.

Appellant received a sentence on June 7, 1935, for the term of his natural life.

On March 18, 1940, Appellant sought his release by habeas corpus proceedings in the United States District Court for the Northern District of California, Southern Division, No. 23230-L. On May 20, 1940, that Petition was denied by Judge Louderback. On June 24, 1940, Judge Louderback denied Appellant's Petition to appeal in forma pauperis.

The above mentioned habeas corpus proceedings although not part of the files and records of the District Court in Minnesota, have been referred to by Appellant in this appeal.

Copies of the Affidavits and other papers which were submitted to Judge Louderback in the habeas corpus proceedings are being herewith forwarded to this Court for examination. They are not part of the files and records of the District Court of Minnesota. Judge Joyce was given copies of these Affidavits and other papers so that he could determine what was decided by Judge Louderback in 1940. Appellant admits receiving copies of these Affidavits.

Judge Joyce held no hearing on the Motion of Appellant under Section 2255, did not order Appellant's presence, took no testimony, but made his Order denying the Motion, based on the files and records in Appellant's case and found no merit to any of his claims.

OPINION BELOW

Judge Joyce, in his Order of January 21, 1953, denying Appellant's Motion under Section 2255, stated as follows:

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

United States of Amercia, Plaintiff vs. Volney Davis, Defendant.	No. 6096 Criminal O R D E R

Volney Davis moves this court under Title 28, Section 2255, for an order vacating or setting aside the life sentence imposed upon him in 1935 following his plea of guilty to an indictment charging him with violation of the Lindbergh Act, 48 Stat. 781, and prays leave to file the same in forma pauperis. Authority to file such a motion in forma pauperis is unnecessary. The grounds for relief set forth in the motion are, briefly, that petitioner was not represented by counsel and did not intelligently waive his right thereto; that he was never taken before a United States Commissioner and was never presented with a copy of the indictment as required by the Federal Rules of Criminal Procedure; that he was not advised of his constitutional rights; that he was held incommunicado, in chains, and in secrecy, prior to his arriagnment; and that he was led to believe by his captors that if he entered a plea of guilty he would be given a term of years.

Substantially the same grounds were presented to the United States District Court of the Northern District of California, Southern Division, early in 1940, in a petition for a writ of habeas corpus. The petition was denied as was his subsequent application to appeal in forma pauperis. While this fact alone would be persuasive authority for a denial of the motion here, nonetheless I have carefully examined the now voluminous files and records in petitioner's case and I find no merit in any of his claims. The record conclusively shows, and corroborates my own recollection in this regard, that the petitioner was fully apprized of his right to have counsel and freely and intelligently waived his right thereto. Also, there was no necessity for taking petitioner before a United States Commissioner since he was arrested pursuant to a warrant issued upon a Grand Jury indictment. At the time petitioner was arraigned there existed no requirement that he be furnished with a copy of the indictment. While it has been the custom of this court to insure this being done, the record here is silent in that respect. The record does show, however, that petitioner was made aware of and was fully acquainted with the nature of the charge against him, and that the indictment was read to him in open court before his plea was entered. The record also negates the claim of petitioner that he was held incommunicado, in chains and secrecy, although there is no doubt that he was closely guarded, and rightly so in view of his past escape record. Nor is there anything in the record which gives any support to his claim that he was promised a term of years if he pleaded "guilty". The validity of a life sentence under the Lindbergh Act as it existed at the time of sentencing, was

considered and held proper in Bates v. Johnston, (9 Cir.) 111 F. (2d) 966. At any rate, none of the latter claims constitutes grounds for the relief specified in Section 2255 of Title 28, United States Code.

The within motion follows a volume of correspondence addressed to this court by petitioner, and in the opinion of the court is largely influenced by the hope that this court will permit his natural sympathy to override the consideration he must give to the merits of petitioner's claims. This the court cannot do. The files and records show conclusively that the petitioner is entitled to no relief, and his motion is therefore denied.

MATTHEW M. JOYCE
United States District Judge.

Dated January 21st, 1953.

QUESTIONS PRESENTED

The Appellant questions the following:

1. Judge Joyce's Order of January 21, 1953, denying him the relief prayed for in his Motion made pursuant to 28 U.S.C. 2255.
2. The right of Judge Joyce to dispose of the Section 2255 Motion without Appellant having counsel.
3. The right of Judge Joyce to dispose of his Section 2255 Motion by the use of copies of the Affidavits that were originally submitted to Judge Louderback in view of the Fifth Amendment.
4. The right of Judge Joyce to preside over the Section 2255 Motion in view of his Affidavit given in the 1940 habeas corpus proceedings.
5. That Appellant was not fully apprised of his right to have counsel on June 3, 1935, and that he did not fully and intelligently waive his right to counsel at the time of his arraignment on June 3, 1935.

6. That Appellant should have been taken before a U. S. Commissioner after his arrest under a warrant issued pursuant to the Indictment.

7. That Appellant should have been furnished with a copy of the Indictment before his arraignment on June 3, 1935.

8. That Appellant should have been fully advised as to his Constitutional rights.

9. That Appellant should not have been held incommunicado, in chains or in secrecy prior to his arraignment on June 3, 1935.

10. That Appellant was promised a term of years if he pleaded guilty.

11. That Appellant was entitled to be present at a hearing pursuant to his Motion made under Section 2255.

STATUTES INVOLVED.

18 U.S.C. 408a as it existed in 1935:

June 22, 1932. (S.1525) (Public, No. 189) Forbidding the transportation of any person in interstate or foreign commerce, kidnaped, or otherwise unlawfully detained, and making such act a felony.

Kidnaped, etc. persons. Transportation of, in interstate or foreign commerce, forbidden. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward shall, upon conviction, be punished by imprisonment in the penitentiary for such term of years as the court, in its discretion, shall determine: Provided, That the term "interstate or foreign commerce" shall include transportation from one State, Territory, or the District of Columbia to another State, Territory, or the District of Columbia, or to a foreign country; or from a foreign country to any State, Territory, or the District of Columbia: Provided further, That if two or more persons enter into an agreement, confederation, or conspiracy to violate the provisions of the foregoing Act and do any overt act toward carrying out such unlawful agreement, confederation, or conspiracy such person or persons shall be punished in like manner as hereinbefore provided by this Act.

Provisos, "Interstate of foreign commerce", construed.

Conspiracy to violate, etc. punishable.

Approved, June 22, 1932.

28 U.S.C. 2255:

Federal custody; remedies on motion attacking sentence.

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

A motion for such relief may be made at any time.

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention. June 25, 1948, c. 646, 62 Stat. 967, amended May 24, 1949, c. 139, #114, 63 Stat. 105.

28 U.S.C. 1654.

APPEARANCE PERSONALLY OR BY COUNSEL.

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel, as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein. June 25, 1948, c. 646, 62 Stat. 944, amended May 24, 1949, c. 139, #91, 63 Stat. 193.

POINTS AND AUTHORITIES

I. THE ORDER OF JUDGE JOYCE DENYING APPELLANT'S MOTION UNDER SECTION 2255 WAS PROPER AND IS CLEARLY SUPPORTED BY THE FILES AND RECORDS.

1. Defendant may waive counsel in a criminal case.

Raisin vs. U. S. (CA 6, 1950), 183 Fed. (2d) 179.

Powell vs. U. S. (CA 5, 1949), 174 Fed. (2d) 470.

Woolard vs. U. S. (CA 5, 1949), 178 Fed. (2d), 84.

Glasser vs. U. S. (1942), 315 U. S., 60.

28 U.S.C. 1654.

2. There is no necessity for taking a defendant before a United States Commissioner where he is arrested pursuant to a warrant issued upon a Grand Jury Indictment.

Yodock vs. U. S. (MD Pa. 1951), 97 Fed. Supp. 307.

U. S. vs. Slaughenhoupt (DC Pa. 1952), 102 Fed. Supp. 820.

[redacted]

3. On June 3, 1935, there was no federal requirement that a defendant be furnished with a copy of an Indictment before arraignment.

Yodock vs. U. S. (MD Pa. 1951), 97 Fed. Supp. 307.

Cukovich vs. U. S. (CA 6, 1948), 170 Fed. (2d), 89; Certiorari denied 336 U. S. 905.

Rule 10, Federal Rules of Criminal Procedure.

4. Failure of the Defendant to advise the Court between June 3, 1935, and June 7, 1935, inclusive, that he was held incommunicado, in chains or in secrecy, would dispel that such ever happened.

Chadwick vs. U. S. (CA 5, 1948), 170 Fed. (2d), 986; Certiorari denied 337 U. S. 926.

Yodock vs. U. S. (MD Pa. 1951), 97 Fed. Supp. 307.

Carroll vs. U. S. (CA 6, 1949) 174 Fed. (2d) 412.

Rupinski vs. U. S. (CA 6), 4 Fed. (2d), 17.

Buie vs. King (CA 8, 1943) 137 Fed (2d), 495.

Rule 36, Federal Rules of Criminal Procedure, 18 U.S.C.A.

5. A life sentence under the Lindbergh Act as it existed on June 3, and June 7, 1935, was a valid sentence.

Bates vs. Johnston (CA 9, 1940) 111 Fed. (2d) 966;
Certiorari denied 311 U. S. 646.

6. Under a Section 2255 proceeding, a defendant does not have an absolute right to be present at a hearing, nor is the District Judge required in all cases to have a hearing.

U. S. vs. Hayman, 342 U. S. 205; (January 1952).

U. S. vs. Rosenberg, et al., 200 Fed. (2d) 666 (CA 2, December 31, 1952).

Close vs. U. S. (CA 4) 198 Fed. (2d) 144, July 18, 1952; 73 Sup..Ct. 175;
Certiorari denied ~~xxSupxxCtxx175;~~ 344 U. S. 879.

28 U.S.C. 2255.

II. A MOTION BY A DEFENDANT PURSUANT TO 18 USC, SECTION 2255, MAY BE DISPOSED OF BY THE DISTRICT COURT WITHOUT APPOINTING COUNSEL FOR THE DEFENDANT.

Crowe vs. U. S. (CA 4, 1949) 175 Fed. (2d), 799.

Motion of Davis, (DC Mont. 1949) 92 Fed. Supp. 524.

III. APPELLANT HAVING RAISED THE QUESTION OF THE AFFIDAVITS IN THE HABEAS CORPUS PROCEEDING IN CALIFORNIA, CANNOT OBJECT TO THE DISTRICT COURT'S EXAMINATION OF SUCH AFFIDAVITS IN A PROCEEDING UNDER SECTION 2255.

Motion of Davis (DC Mont. 1949) 92 Fed. Supp. 524.

IV. THE DISTRICT JUDGE WHO SENTENCED THE DEFENDANT IS THE PROPER JUDGE TO DETERMINE A MOTION UNDER SECTION 2255.

Carvell vs. U. S., (CA 4), 173 Fed.)2d) 348.

28 U.S.C., Section 2255.

ARGUMENT

I.

THE ORDER OF JUDGE JOYCE DENYING APPELLANT'S MOTION UNDER SECTION 2255 WAS PROPER AND IS CLEARLY SUPPORTED BY THE FILES AND RECORDS.

A. Appellant may waive counsel in a criminal action.

The Term Minutes of the District Court discloses that on June 3, 1935, "upon being questioned by the Court, said Appellant stated that he did not desire the advice of counsel and entered a plea of 'guilty' to the charge in the Indictment herein". On June 7, 1935, when Appellant appeared for sentence before the District Court, the files and records are silent as to any claim of violation of Appellant's Constitutional rights, or that he was held incommunicado, in chains and in secrecy, or that he was deprived of the right to have the assistance of counsel.

In Raisin vs. U. S. (CA 6,) 183 Fed. (2d), 179, Appellants were indicted for bankrobbery and sought to vacate the conviction and sentences. They claimed that before the District Court they did not have the aid of counsel when they entered their pleas of "guilty" and they did not know that they were pleading "guilty" to an aggravated form of bankrobbery. They further claimed that they were not advised of their right to counsel. The Court of Appeals, in sustaining the Order of the District Court denying the Motion to vacate and set aside their sentences and judgments, at page 180, stated:

> * * * that the District Judge receiving the said pleas, prior to the pleas of guilty, advised appellants of their constitutional rights to have counsel, and that they replied that they were guilty and had made a complete confession to the officers and were anxious to get the case over with, and did not desire to have counsel appointed for them. It further appears that prior to their sentences, appellants made confessions of their guilt of the said robberies. It further appears that after the above mentioned admission of guilt to Chief Probation Officer Doyle, and the confessions of the said appellants to the crimes with which they were charged in the indictments, inquiry was made of them by the District Judge as to whether they wished to have counsel, and upon their statement that they did not wish to have counsel, the District Court proceeded to the sentences and judgments entered in consideration of their pleas of guilty.

In the case of Powell vs. U. S. (CA 5) 174 Fed. (2d) 470, decided in 1949, petitioner sought a vacation of the judgment claiming he was denied assistance

of counsel. The Court stated at page 471:

> The record shows affirmatively that petitioner, advised of his right to counsel and asked whether he desired to have one appointed, waived the assistance of counsel and entered his plea of guilty. The petition was based upon nothing but appellant's unsupported statement to the contrary.
> The district judge was right in denying the petition.

In the case of Woolard vs. U. S. (CA 5), 178 Fed. (2d), 84, decided in 1949, brought pursuant to Section 2255, appellants sought to set aside various sentences imposed upon them by the District Court, one of the grounds being the alleged failure to appoint counsel to represent them upon their arraignment and pleas of "guilty", and further whether they waived their Constitutional right to counsel before the sentences were imposed. The Court stated at page 87:

> It is settled law that the Sixth Amendment of the Federal Constitution does not require that counsel be forced upon a competent defendant by a court, and that a defendant charged with a federal offense, who is aware of his constitutional privilege to have counsel appointed to represent him, may nevertheless waive such right. Adams v. U. S. ex rel. McCann, 317 U. S. 269, 63 S.Ct. 236, 87 L. Ed. 268, 143 A.L.R. 435; Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461, 146 A.L.R. 357; Ossenfort v. Pulaski, 5 Cir., 171 F. 2d 246. * * * * *

The Court further held quoting from Johnston vs. Zerbst, 304 U. S. 458, 58 U. S. 1019, 1023:

> The determination of whether there has been an intelligent waiver of right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience and conduct of the accused. See also, Adams v. U. S. ex rel McCann, 317 U. S. 269, 63 S. Ct., 236, 87 L. Ed. 268, 143 A.L.R. 435.

Appellant is relying on Glasser v. U. S., decided in 1942, 315 U. S. 60, But that case is definitely distinguishable from the facts before this Court. Glasser had his own attorney and the trial court over Glasser's objection, appointed Glasser's attorney to represent a co-defendant. The United States Supreme Court pointed out that admittedly the case against Glasser was not a strong one. It stated at page 67:

> Admittedly, the case against Glasser is not a strong one. The Government frankly concedes that the case with respect to Glasser "depends in large part . . . upon a development and collocation of circumstances tending to sustain the inferences necessary to support the verdict." This is significant in relation to Glasser's contention that he was deprived of the assistance of counsel contrary to the Sixth Amendment. In all

> cases the constitutional safeguards are to be jealously preserved for the benefit of the accused, but especially is this true where the scales of justice may be delicately poised between guilt and innocence. Then error, which under some circumstances would not be ground for reversal, cannot be brushed aside as immaterial, since there is a real chance that it might have provided the slight impetus which swung the scales toward guilt.

It is further stated at pages 69 and 70:

> Stewart thereafter represented Glasser and Kretske throughout the trial and was the most active of the array of defense counsel.
>
> The guarantees of the Bill of Rights are the protecting bulwarks against the reach of arbitrary power. Among those guarantees is the right granted by the Sixth Amendment to an accused in a criminal proceeding in a federal court "to have the assistance of counsel for his defense." "This is one of the safeguards deemed necessary to insure fundamental human rights of life and liberty," and a federal court cannot constitutionally deprive an accused, whose life or liberty is at stake, of the assistance of counsel. Johnson v. Zerbst, 304 U. S. 458, 462, 463. Even as we have held that the right to the assistance of counsel is so fundamental that the denial by a state court of a reasonable time to allow the selection of counsel of one's own choosing, and the failure of that court to make an effective appointment of counsel, may so offend our concept of the basic requirements of a fair hearing as to amount to a denial of due process of law contrary to the Fourteenth Amendment, Powell v. Alabama, 287 U. S. 45, so are we clear that the "assistance of counsel" guaranteed by the Sixth Amendment contemplates that such assistance be untrammeled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interests. If the right to the assistance of counsel means less that this, a valued constitutional safeguard is substantially impaired.
>
> To preserve the protection of the Bill of Rights for hard-pressed defendants, we indulge every reasonable presumption against the waiver of fundamental rights. Aetna Insurance Co. v. Kennedy, 301 U. S. 389; Ohio Bell Telephone Co. v. Public Utilities Commission, 301 U. S. 292. Glasser never affirmatively waived the objection which he initially advanced when the trial court suggested the appointment of Stewart. We are told that, since Glasser was an experienced attorney, he tacitly acquiesced in Stewart's appointment because he failed to renew vigorously his objection at the instant the appointment was made. The fact that Glasser is an attorney is, of course, immaterial to a consideration of his right to the protection of the Sixth Amendment. His professional experience may be a factor in determining whether he actually waived his right to the assistance of counsel. Johnson v. Zerbst, 304 U. S. 458, 464. But it is by no means conclusive.
>
> Upon the trial judge rests the duty of seeing that the trial is conducted with solicitude for the essential rights of the accused. Speaking of the obligation of the trial court to preserve the right to jury trial for an accused, Mr. Justice Sutherland said that such duty "is not to be discharged as a matter of rote, but with ~~such~~ [redacted] sound and advised discretion, with an eye to avoid unreasonable or undue departures from that mode of trial or from any of the essential elements thereof, and with a

> caution increasing in degree as the offenses dealt with increase in gravity." Patton v. United States, 281 U. S. 276, 312-313. The trial court should protect the right of an accused to have the assistance of counsel. "This protecting duty imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused. While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting

INSERT

B. Appellant in his Petition under Section 2255, elected to act as his own counsel.

Appellant cannot now question that he was not represented by counsel on his Motion pursuant to Section 2255 because he elected to act as his own attorney. The opening paragraph of his Motion of December 5, 1952, states as follows:

> The Honorable and Learned Judge Mathew M. Joyce:
>
> May it please the Court.
>
> Comes now your Petitioner, Volney Davis, pro se, and enters his name as attorney of record in the above captioned proceedings pursuant to the provisions of Title 28, Section 1654, U.S.C.A. and gives notice to the Court that he is going to keep control and management of his case throughout the life of same in this proceeding.

> that the Petitioner was not given a preliminary hearing, does not afford a basis of relief, for it is well settled that in a federal court a defendant may be indicted without a preliminary hearing and without notice to the defendant. United States v. Liebrich, D.C.M.D. Pa. 1932, 55 F. 2d 341. Furthermore, Petitioner was not arrested prior to the indictment as he was then serving a sentence in the Eastern State Penitentiary, Philadelphia, Pa.,and under these circumstances no preliminary hearing is ever required. United States v. Gray, D.C.D.C. 1949, 87 F. Supp. 436. * * * * *
>
> The record imports verity and cannot be contradicted by the unsupported assertion of the Petitioner; * * * * *
>
> As to (7), that Petitioner was not informed of the indictment, it was pointed out above that the record shows that he was arraigned in open court and notified of the charges being brought against him. Even if the Petitioner did not receive a copy of the indictment, that affords no ground for relief, as there is no obligation on the part of the Government to furnish copies of indictments to defendants in other than capital cases. United States v. Duzee, 1890, 140 U. S1 169, 173, 11 S. Ct. 758, 35 L. Ed. 399.

In U. S. vs. Slaugenhoupt, (DC Pa. 1952), 102 Fed. Supp., 820, the Court stated at page 821:

> The Supreme Court of the United States has held that an indictment establishes probable cause and is itself authority to bring the accused to trial. U. S. ex rel. Kassin v. Mulligan, 1935, 295 U. S. 396, 55 S. Ct. 781, 79 L. Ed. 1501.

The Court also stated at page 821:

> We can find no merit in defendant's position. The identical question was presented to the United States District Court for the District of Columbia in United States v. Gray, 1949, 87 F. Supp. 436, and Judge Holtzoff held that no right of the defendant had been violated by reason of the fact that no preliminary hearing was given, where in the interim between the filing of the complaint and the date of the preliminary hearing, an indictment was returned by a Grand Jury.

III.

ON JUNE 3, 1935, THERE WAS NO FEDERAL REQUIREMENT THAT A DEFENDANT BE FURNISHED WITH A COPY OF THE INDICTMENT BEFORE ARRAIGNMENT.

The Federal Rules of Criminal Procedure became effective March 21, 1946, and prior to that time there was no requirement in Federal practice that a copy of the Indictment be given to the Defendant before he is called upon to plead. See Rule 10 of the Federal Rules of Criminal Procedure, 18 U.S.C.A.

In Yodock vs. U. S., (MD Pa. 1951), 97 Fed. Supp., 307, at page 311 the Court stated as follows:

> As to (7), that Petitioner was not informed of the indictment, it was pointed out above that the record shows that he was arraigned in open court and notified of the charges being brought against him. Even if the Petitioner did not receive a copy of the indictment, that affords no ground for relief, as there is no obligation on the part of the Government to furnish copies of indictments to defendants in other than capital cases. United States v. Duzee, 1890, 140 U. S. 169, 173, 11 S. Ct. 758, 35 L. Ed. 399.

In Cukovich vs. U. S., 170 Fed. (2d) 89, (CA 6, 1948) at page 90 the Court stated:

> At the time of the arrignment and the plea of guilty, which was before the new Rules of Criminal Procedure, there was no requirement that the appellants be furnished with a copy of the indictment, as is now required by Rule 10.

Appellant concedes in this case that the Indictment was read to him in open Court on June 3, 1935.

IV.

FAILURE OF THE DEFENDANT TO ADVISE THE COURT BETWEEN JUNE 3, 1935, AND JUNE 7, 1935, INCLUSIVE, THAT HE WAS HELD INCOMMUNICADO, IN CHAINS OR IN SECRECY, WOULD DISPEL THAT SUCH EVER HAPPENED.

Appellant was in open court on two occasions. On June 3, 1935, when questioned by Judge Joyce, he made no claim that he was held incommunicado, in chains or in secrecy. On June 7, 1935, when he was brought back for

sentencing in open court, he again remained silent on these so-called charges. The Appellant owed a duty to the Court to speak up on either or both of these occasions if he had a complaint to make concerning conduct towards him by Federal officers prior to his arraignment. It is significant that no where in Appellant's motions or appeal papers does he deny his guilt for the offense for which he is now serving.

In the case of Chadwick vs. U. S. (CA 5, 1948) 170 Fed. (2d), 986, Certiorari denied 337 U. S. 926, a motion filed to vacate a judgment and sentence upon the ground that he had been held in secret seclusion by officers of the Government as a prisoner and as a result thereof a confession was then secured from him. The Court of Appeals at page 986 stated:

> The sentence he is serving was based not upon the confession of which he complains but upon his plea of guilty voluntarily made with the assistance, and upon the advice, of his counsel many months after the purported confession was made.

It is respectfully submitted that Appellant here does not charge that a confession of any kind was forced or obtained from him by any Federal officer. Appellant does not deny that he pleaded "guilty" in open Court voluntarily after the Indictment was read to him. Although he denies that he was advised as to his right to assistance of counsel, the records of the District Court disclose otherwise.

As stated in Yodock vs. U. S., supra, at page 310:

> The record imports verity and cannot be contradicted by the unsupported assertion of the Petitioner,

the Court cited Johnson vs. U. S. 1911, 225 U. S. 405.

In Carroll vs. U. S., 174 Fed. (2d), (CA 6, 1949) the Court stated at page 413:

> The record directly and positively contradicts the averments of appellant respecting his guilty plea to the second count of the indictment and as to his request for counsel. This is not a habeas corpus proceeding and we must, therefore, accept the record of the judgment and commitment entered by the district court as accurate and truthful in the recital of what occurred when appellant was arraigned and sentenced.

Although the Clerk of Court on June 7, 1935, in the Minutes, stated erroneously that "Appellant with his attorney," [redacted] it was perfectly proper for the District Court when such error was called to its attention, to correct the error as was done by Judge Joyce on October 10, 1939.

Rule 36 of the Federal Rules of Criminal procedure, 18 U.S.C.A., permits clerical mistakes in judgment, orders or other parts of the record arising from oversight or omission, to be corrected by the Court at any time after such notice, if any, as the Court orders.

The notes of the Advisory Committee on Rules state that Rule 36 continues existing law.

In the case of Rupinski vs. U. S. 4 Fed. (2d) 17 (CA 6, 1925), the Court at page 18 stated:

> While the general rule is that the records and decrees of the court cannot be altered after the term, there is a well-recognized exception in the case of mere clerical errors.

In Buie vs. King (CA 8, 1943), 137 Fed. (2d), 495, the Court, at page 498 stated:

> The recognized authority of federal district courts to correct their records and to supply omissions therein has been declared more broadly since the decision in United States v. Patterson, C.C.D.N.J., 29 F. 775. As said, however, in Gagnon v. United States, 193 U. S. 451, 24 S.Ct. 510, 48 L.Ed. 745:
>
> "The inherent power which exists in a court to amend its records, and correct mistakes and supply defects and omissions therein, is not a power to create a new record but presupposes an existing record susceptible of correction or amendment." Generally records and decrees cannot be altered after the term, but such rule does not apply in the case of mere clerical errors. Rupinski v. United States, 6 Cir., 4 F. 2d 17. Susceptibility of correction in a record is thus further illustrated in Gagnon v. United States, supra, 193 U. S. at page 458, 24 S.Ct. at page 512, 48 L. Ed. 745:
>
> "In such cases there is often a memorandum of some kind entered upon the calendar, or found in the files, and there is no impropriety in ascertaining the fact even by parol evidence, and supplying the missing portion of the records."
>
> "The evidence adduced may include the recollection of the presiding judge, and certain notes and memoranda deposited with the clerk in pursuance of law. Gonzales v. Cunningham, 164 U.S. 612, 614, 17 S.Ct. 182, 41 L. Ed. 572. And, semble, memoranda made by the clerk at the trial, though not entered upon the journal in record form.
>
> "It is our opinion that this power, of necessity, exists in the district court, and that its exercise (even after the term is passed at which the record was made up) must in a great measure be governed by the facts of each case."

V,

A LIFE SENTENCE UNDER THE LINDBERGH ACT, AS IT EXISTED ON JUNE 3 and 7, 1935, WAS A VALID SENTENCE.

There can be no question that the life sentence imposed in this case was proper under the provisions of the Lindbergh Law, 47 Stat. 326, 18 U.S.C. 408(a), as the law existed in 1935. See Bates vs. Johnston, 111 Fed. (2d), 966, CA 9, decided in 1940; certiorari denied 311 U. S. 646, [redacted] In that case, [redacted] one arising under the Lindbergh Law, the Ninth Circuit upheld a life sentence imposed upon the defendant for the substantive crime of kidnaping. The Court, at page 966, stated as follows:

> Harvey J. Bailey was one of appellant's co-defendants; he was sentenced to life imprisonment and appealed from the judgment entered upon conviction of conspiracy to violate 18 U.S.C.A. 408a, which is the identical section complained of here, and raised the same question as petitioner. The answer given by the Circuit Court of Appeals for the Tenth Circuit in Bailey v. United States, 74 F. 2d 451, 452, concludes the matter:
>
> "The statute prescribes as punishment for the offense, 'imprisonment in the penitentiary for such term of years as the court, in its discretion, shall dtermine.'
>
> "It is our opinion that Congress did not use the phrase 'term of years' in the technical sense attributable to it when applied to estate in lands. Life being of limited duration and death being certain, a sentence for life is definite and certain. It is tantamount to a sentence for a definite term of years greater than the possible life span of the person sentenced. See Commonwealth v. Evans, 16 Pick (448), 33 Mass. 448.

VI.

UNDER A SECTION 2255 PROCEEDING A DEFENDANT DOES NOT HAVE AN ABSOLUTE RIGHT TO BE PRESENT AT A HEARING NOR IS THE DISTRICT JUDGE REQUIRED IN ALL CASES TO HAVE A HEARING.

Judge Joyce's Order of January 21, 1953, denying Appellant's Motion made pursuant to Section 2255 which sought an Order vacating or setting aside Appellant's life sentence imposed upon him in 1935, following his plea of "guilty" was made without a hearing and without permitting Appellant to appear and testify as he had requested in his Petition for Writ of Habeas Corpus ad Testificandum simultaneously made with his Motion under Section 2255.

Appellant relies heavily on the recent case of U. S. vs. Hayman, 342 U. S. 205, decided in January 1952. That case, however, is distinguishable from the matter now before this court. In that case the Defendant was represented by

counsel of his own choosing. The defendant did not discover until after the trial that his attorney was representing conflicting interests. The Supreme Court concluded that under a Section 2255 proceedings, defendant's presence was necessary at such a hearing and that the trial court committed error in receiving testimony for three days in connection with the issues of fact raised by the Motion under Section 2255 without the presence of the defendant, and without notice to him.

The Supreme Court held at pages 219 and 220 as follows:

> The issues raised by respondent's motion were not determined by the "files and records" in the trial court. In such circumstances, Section 2255 requires that the trial court act on the motion as follows: " . . . cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto." (Emphasis supplied.) In requiring a "hearing", the Section "has obvious reference to the tradition of judicial proceedings". Respondent, denied an opportunity to be heard, "has lost something indispensable, however convincing the ex parte showing." We conclude that the District Court did not proceed in conformity with Section 2255 when it made findings on controverted issues of fact relating to respondent's own knowledge without notice to respondent and without his being present.

The Supreme Court, however, made it clear that in not every Section 2255 proceeding is the presence of the defendant required. It said at pages 222 and 223:

> The existence of power to produce the prisoner does not, of course, mean that he should be automatically produced in every Section 2255 proceeding. This is in accord with procedure in habeas corpus actions. Unlike the criminal trial where the guilt of the defendant is in issue and his presence is required by the Sixth Amendment, a proceeding under Section 2255 is an independent and collateral inquiry into the validity of the conviction. Whether the prisoner should be produced depends upon the issues raised by the particular case. Where, as here, there was substantial issues of fact as to events in which the prisoner participated, the trial court should require his production for a hearing.

In U. S. vs. Rosenberg, et al, (CA 2, decided December 31, 1952) 200 Fed. (2d) 666, which was a Section 2255 proceeding the Court had the following to say at page 668:

> Under this section the court must grant a prompt hearing, determine the issues and make findings of fact and conclusions of law with respect thereto, "Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief". After hearing oral argument of counsel for petitioners and of the United States Attorney, Judge Ryan ruled

that it was conclusively shown that the petitioners were entitled to no relief and that no material issue of fact was raised which required a "hearing". * * * * *

The remedy afforded by this statutory proceeding is alalogous to that afforded by a writ of habeas corpus. United States v. Hayman, 342 U. S. 205, 72 S. Ct., 263. It, like that writ, "cannot ordinarily be used in lieu of appeal to correct errors committed in the course of a trial, even though such errors relate to constitutional rights." United States v. Walker, 2 Cir., 197 F. 2d, 287, 288; Adams v. United States ex rel. McCann, 317 U. S. 269, 274, 63 S. Ct. 236, 87 L.Ed. 268. Nor can it be used to obtain a retrial according to procedure which the petitioner voluntarily discarded and waived at the trial upon which he was convicted. Adams v. United States ex rel. McCann, 317 U. S. 269, 281, 63 S.Ct. 236, 87 L.Ed. 268; Carruthers v. Reed, 8 Cir., 102 F. 2d 933, 938; United States ex rel. Marshall v. Snyder, 2 Cir., 160 F.2d 351, 353; Bowen v. United States, 5 Cir., 192 F.2d 515, 517; Smith v. United States, 88 U.S.App.D.C. 80, 187 F.2d 192, 198, certiorari denied 341 U. S. 927, 71 S.Ct. 792, 95 L.Ed. 1358. These limitations on the function of a petition under #2255 must be borne in mind in considering the present appeals.

Since Judge Ryan held no hearing at which testimony could be presented, it is necessary to treat as true all facts stated in the petitions and in accompanying affidavits and exhibits, and to disregard all contrary statements of fact in the government's affidavits. This does not mean, however, that Judge Ryan was obliged to accept as facts conclusionary allegations asserted by the petitioners. See United States v. Sturm, 7 Cir., 180 F. 2d 413, 414; United States v. Pisciotta, 2 Cir., 199 F. 2d 603. For example, the fact that newspapers carried the stories set out in the exhibits must be accepted, but the conclusion that such publicity made impossible the selection of an impartial jury is an inference which the judge is not necessarily bound to accept.

In the case of Close vs. U. S. (CA 4, decided in 1952), 198 Fed. (2d), 144, Certiorari denied 344 U. S. 879, a Section 2255 proceeding, defendant sought to vacate a judgment and sentence of imprisonment, claiming he was represented by counsel who also represented co-defendants, and defendant in that case, asked to be brought from Alcatraz to Baltimore to testify on the hearing on the motion. He relied heavily on the case of U. S. vs. Hayman, supra, the Court of Appeals at pages 145 and 146 stated:

And we think it equally clear that appellant's request that he be produced to testify at the hearing was properly denied. It is unthinkable that the law should require that, in a case as barren of merit as this, persons duly convicted of crime should have the right to have themselves transported about over the country at the expense of the government by merely filing an affidavit to the effect that the attorney whom they had employed to represent them was disqualified because he represented other defendants. When parties employ and pay counsel, the court must assume that the representation is satisfactory; and to raise a substantial issue which would justify the court in having the prisoner produced to testify at a hearing, more is requied than the mere affidavit of the prisoner as to his conversation with counsel.

There is nothing to the contrary in United States v. Hayman, 342 U.S. 205, 72 S.Ct. 263, 274. In that case, the production of the prisoner was required because it was thought that there were

substantial issues of fact upon which it was necessary that his evidence be taken; but the court was at pains to point out that the prisoner should not be automatically produced in every Section 2255 proceeding. The court said:

> "The existence of power to produce the prisoner does not, of course, mean that he should be automatically produced in every Section 2255 proceeding. This is in accord with procedure in habeas corpus actions. Unlike the criminal trial where the guilt of the defendant is in issue and his presence is required by the Sixth Amendment, a proceeding under Section 2255 is an independent and collateral inquiry into the validity of the conviction. Whether the prisoner should be produced depends upon the issues raised by the particular case."

In Crowe v. United States, 4 Cir., 175 F. 2d, 799, 801, this court laid down the rule applicable in the following language:

> "Crowe complains because his production in court was not ordered; but the section under which the motion was made expressly provides: 'A court may entertain and determine such motion without requiring the production of the prisoner at the hearing'. * * * Only in very rare cases, we think, will it be found necessary for a court to order a prisoner produced for a hearing under 28 U.S.C.A. #2255. Certainly, whether or not the court should require him to be brought into court for the hearing is a matter resting in the court's discretion. Production of the prisoner should not be ordered merely because he asks it, but only in those cases where the court is of opinion that his presence will aid the court in arriving at the truth of the matter involved."

28 U.S.C. 2255, clearly stated that "a Court may render and determine such motion without requesting the production of the prisoner at the hearing."

In this case Judge Joyce determined not to have a hearing and made his Order denying the Motion under the provisions of Section 2255 which permits such procedure where "the files and records of the case conclusively show that the prisoner is entitled to no relief."

Appellant having raised the question of Affidavits in the habeas corpus proceedings in California, can not object to the District Court's examination of such affidavits in a proceeding under Section 2255.

In Appellant's application to this Court for an Order that the records in the District Court be forwarded to the Eighth Circuit, Court of Appeals, he states as Point 4, under "Statement of Points Relied Upon", "That testimony submitted to the Court by affidavits and allowed by the Court to enter the record, would develope on cross-examination as incompetent testimony."

In Appellant's Brief on pages 1 and 2, following the index, the Affidavits and other papers are again referred to. For example, Appellant states: "That

any testimony whether submitted by affidavits or otherwise, be excluded from the records now on appeal filed in the District Court at St. Paul, Minn. pursuant to Title 28, Section 2255.

In his Notice of Appeal, Appellant claims that these Affidavits were testimony and used against him in violation of the Fifth Amendment. Appellant claims that the hearing was in the form of Affidavits. The United States Attorney's office on January 16, 1953, in opposing Appellant's Motion under Section 2255, wrote a letter to Judge Joyce and forwarded it to him, copies of Affidavits and papers furnished the United States District Court for the Northern District of California, Southern Division, No. 23230-L, in opposition to Appellant's Motion filed March 18, 1940, seeking discharge by Writ of Habeas Corpus. That Petition was denied by Judge Louderback on May 20, 1940. Judge Joyce was also furnished with a copy of Judge Louderback's Order denying an appeal to appeal informa pauperis from the Order of Judge Louderback denying Appellant's Writ of Habeas Corpus. These Affidavits and other papers have been forwarded to this Court for examination. This office did not file these papers with the Clerk nor did Judge Joyce. These Affidavits and other papers were returned by Judge Joyce to this office.

The Affidavits are those of Court officials, newspaper officials, FBI Special Agents, United States Attorney at that time, and Judge Joyce who were all present on June 3, 1935, at the time of Appellant's arraignment or who otherwise knew facts concerning Appellant's arrest and subsequent arraignment and sentencing on June 7, 1935.

It is respectfully submitted that Judge Joyce was entitled to have before him these Affidavits and other papers to first determine whether or not the California proceedings would render the Section 2255 proceeding res judicata; and, secondly, they would help the trial judge recollect what had occurred at the arraignment and sentencing on June 3 and 7, 1935.

VII

THE DISTRICT JUDGE WHO SENTENCED THE DEFENDANT IS THE PROPER JUDGE TO DETERMINE A MOTION UNDER SECTION 2255.

It was not only proper but it was the intent of Section 2255 that the Judge who passed sentence should hear Motions under that Section.

In the case of Carvell vs. U. S. (CA 4, 1949) 173 Fed. (2d), 348, the Court stated at pages 348 and 349 as follows:

> Complaint is made that the judge who tried the case passed upon the motion. Not only was there no impropriety in this, but it is highly desirable in such cases that the motions be passed on by the judge who is familiar with the facts and cirumstances surrounding the trial, and is consequently not likely to be misled by false allegations as to what occurred. It was to avoid the unseemly practice of having attacks upon the regularity of trials made before another judge through resort to habeas corpus that section 2255 of Title 28 was inserted in the Judicial Code.

Section 28 U.S.C. 2255, states:

> The sentencing Court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

The use of the words "sentencing court" would indicate an intent that the judge who imposed the sentence may certainly pass on a motion under Section 2255.

In the case before this Court the record conclusively shows that the Appellant was first advised of his right to have assistance of counsel and declined such assistance.

CONCLUSION

We submit that the trial court's records show that Appellant was advised of his right to have counsel and freely and intelligently waive his right thereto. There was no necessity for taking Appellant before a United States Commissioner since he was arrested pursuant to a warrant issued upon a Grand Jury Indictment. At that time there was no requirement that Appellant be furnished with a copy of the Indictment and he admits to its reading in open Court prior to his arraignment. The sentence to life imprisonment was proper under the law as it then existed. The Order of Judge Joyce denying the Motion under Section 2255, is correct and should be affirmed.

Dated: July 1953.

Respectfully submitted,

GEORGE E. MacKINNON,
United States Attorney.

ALEX DIM,
Assistant United States Attorney.